
(2012) 07 PAT CK 0106

In the Patna High Court

Case No : Criminal Miscellaneous No. 44576 of 2009

Krishna Singh and Others

APPELLANT

Vs

The Central Bureau of Investigation SPE

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

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

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(5), 207, 227, 239

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2012) 4 PLJR 821

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Prashant Kashyap and Amit Prakash, for the Appellant; Bipin Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Both the aforesaid cases were heard together and are being disposed of by this common order. Before proceeding with the matter, it is relevant to incorporate that the aforesaid petitions were earlier heard and on 28.6.2012, in view of the fact that in the present case F.I.R. was lodged long back in the year 1988, this court directed for listing both the cases under the heading "For Orders" on 9th July, 2012, so that, Court may contemplate to finally hear and dispose of the matter under the heading "For Orders". Earlier, Smt. Soni Srivastava, learned counsel, was appearing on behalf of petitioners in both the cases. However, on 9th July, 2012, an unusual prayer was made by one Sri Pawan Kumar Singh, learned Advocate, for transferring the case to any other court. This Court passed a detailed order on 13.7.2012, which is reproduced hereinbelow:-

Both the cases have been taken together. Cr. Misc. No. 44576 of 2009 was taken up for hearing on the point of admission on 3.4.2012. The present petition was filed by four petitioners, who had authorized Smt. Soni Shrivastava and Sri Amit

Prakash, learned counsel to represent their case before this Court. On 3.4.2012, the matter was heard. A plea was taken by learned counsel for the petitioners that trial has inordinately delayed. On query, it was intimated by Sri Bipin Kumar Sinha, learned Standing Counsel for C.B.I. that on the date, the Court of Special Judicial Magistrate, C.B.I., Patna was vacant. Keeping in view the fact that case was an old one, this Court directed the Registrar General of this Court to submit report on the fact "as to whether the court of Special Judicial Magistrate, C.B.I. Patna is vacant or not. If it is vacant, within what time, power is going to be delegated for conducting C.B.I., cases by the learned Magistrate, where the case is pending.

After report was received from the office of the Registrar General, the matter was again placed before this Court on 23.4.2012. On that date, a prayer was made by learned counsel for the petitioners for granting accommodation and it was directed to list this case after four weeks. Since power was not delegated till that date for conducting C.B.I. cases, this Court directed the Registrar General to place on record further progress in respect of appointment of Special Judicial Magistrate, C.B.I., Patna. Thereafter, again report was placed by the Registrar General, whereby it was evident that one Sri Sunil Kumar No. 2, Judicial Magistrate, Patna was nominated as Presiding Officer as Special Judicial Magistrate Court, C.B.I., Patna as per Government Notification. Again on 26.6.2012, the case was got adjourned as per instance of the petitioners and it was directed to be listed on the next date. On 28.6.2012, Smt. Soni Shrivastava, learned counsel for the petitioners informed the Court that in Cr. Misc. No. 44576 of 2009, petitioners had filed Interlocutory Application i.e. I.A. No. 795 of 2012, which was not on record and, as such, office was directed to locate the same and place it on record.

Keeping in view the fact that the case was pending since long, this Court directed for listing the case under the heading "For Orders" on 9th July, 2012, so that Court may contemplate to finally hear and dispose of the matter under the same heading. On 9th July, 2012, when the case was taken up, one another counsel, namely, Sri Pawan Kumar Singh appeared and informed the Court that after obtaining "no objection" from earlier appearing counsel, he has filed fresh Vakalatnama. He further made a prayer for transferring the case to any other Court. On query by the Court regarding the reason for such prayer, it was replied that I (Rakesh Kumar, J.) was earlier C.B.I. Counsel. On that date without recording any order, the Court requested the learned counsel for the petitioners to come prepared and argue the case on the next date. Again on 10.7.2012 when matter was taken up, similar stand was taken by Sri Pawan Kumar Singh, learned counsel, who had appeared after obtaining "no objection" from the counsel, who was appearing earlier. Since on the date, Smt. Soni Shrivastava, learned counsel, who was appearing, was not present, the matter was deferred and directed to be listed for today (i.e. 13.7.2012). Smt. Soni Shrivastava, learned counsel, who had appeared earlier in this case, is present in the Court and she admits that on earlier occasion, the matter was heard, but on the last

date i.e. on 28.6.2012 since Interlocutory Application was not on record, -the matter was deferred for 9th July, 2012. Today again same stand has been taken by Sri Pawan Kumar Singh, learned counsel. The Court is not recording any opinion in respect of approach adopted by either petitioners or Sri Pawan Kumar Singh, learned counsel, who has appeared in this case, but fact remains that before appearance of Sri Pawan Kumar Singh, the matter was earlier heard and Smt. Soni Shrivastava, learned counsel, who was appearing, had never raised any grievance regarding transfer of the case. Had this stand been taken earlier, the matter would have been different. Today, it was pointedly asked by this Court to Sri Pawan Kumar Singh, learned counsel for the petitioners as to whether I had ever appeared in this case as C.B.I. Counsel, it was replied in negative. Sri Bipin Kumar Sinha, learned Standing Counsel for C.B.I., on instruction, informed the Court that being C.B.I. Counsel I had never dealt with this case.

In this case, since on earlier occasion quashing of Criminal Proceeding was prayed on the ground of inordinate delay, which was contrary to the provisions contained under Article 21 of the Constitution of India and, the Court is of the opinion that in the interest of justice, it would not be proper to accept the unwarranted prayer of Sri Pawan Kumar Singh, learned counsel for transferring the case. The plea for transferring the case after the case was heard on few dates appears to be not genuine. On the contrary it appears to be a ploy for further delaying conclusion of the case, in which charge-sheet was submitted long back in the year 1990.

However, as a last indulgence, list this case on 16th July, 2012 to enable learned counsel for the petitioners to address the Court on merit.

2. On 16.7.2012, on the prayer made by learned counsel for the petitioners, case was deferred for today.

3. Brief fact of the case is that on source information in the year 1988 an F.I.R. vide RC 19(S) of 1988 was registered by the Central Bureau of Investigation, Patna. It was alleged that Krishna Singh (petitioner no. 1 in Cr. Misc. 44576 of 2009) who was working as Executive Engineer, National Building Construction Corporation, Ghaziabad (U.P.) had entered into a criminal conspiracy with Arwal Police, employees of Patna Municipal Corporation and Insurance Officials and attempted to cheat various Insurance Companies by inducing them to deliver total amount of Rs. 3,50,000/- on the basis of forged documents in respect of death of his mother-in-law, namely, Maheshwari Devi. During investigation, involvement of other accused persons including petitioners of both the aforesaid cases transpired. It was noticed that Maheshwari Devi, mother-in-law of Krishna Singh died in the month of February, 1985, which was natural death. After the death of mother-in-law of accused Krishna Singh he developed an idea of inducing Insurance Companies to deliver Rs. 3,50,000/- on the basis of forged and fabricated documents showing death of his mother-in-law Maheshwari Devi as accidental in the month of March, 1985. Even in absence of dead body of Maheshwari Devi, he conspired with one Dr. Rajendra Thakur (accused/Approver)

to grant death certificate. Similarly, one of the co-accused namely, Mahendra Prasad Singh, Sub-Inspector of Police (petitioner no. 3 in Cr. Misc. 44576 of 2009), even in absence of dead body, prepared a forged and fictitious inquest report. The accused, petitioner-Krishna Singh, obtained "Personal Accident Insurance Benefit Policies" for an amount of Rs. 1,00,000/- from National Insurance Co. Ltd. on 1.3.1985, another policy for an amount of Rs. 50,000/- from United India Insurance, Midnapore Branch (West Bengal) dated 4.3.1985 and policy for an amount of Rs. 2,00,000/- from New India Insurance Co., Gaya Branch, Bihar on 6.3.1985. However, before final withdrawal the fraud was detected. During investigation involvement of all the petitioners surfaced including the involvement of one Dr. Rajendra Thakur and as such, charge-sheet in the case was submitted on 26.12.1990 for offences under Sections 120B read with 420/511, 467, 468, 471 and 477A of the Indian Penal Code. Altogether thirteen (13) accused persons were forwarded through the charge-sheet. Before filing charge-sheet, the Investigating Agency had also received prosecution sanction in respect of accused Mahendra Prasad Singh (petitioner no. 3 in the first case). Thereafter, cognizance order was passed in the month of March, 1991. Even discharge petitions filed by accused persons were rejected in the year 1995 and accused persons were directed to remain physically present for framing of the charge, but, one way or the other, the case has not proceeded from the stage of rejection of discharge petition. Meaning thereby, that till date charges have not been framed.

4. Sri Prashant Kashyap, learned counsel, on instruction of Sri Pawan Kumar Singh, who has filed "vakalatnama" in this case, after obtaining no objection from earlier Advocate, at the very outset, while addressing the Court on merit of the case has argued that prima facie there is no material warranting the petitioners to put on trial. He has further argued that in both the cases petitioners have filed interlocutory application i.e. I.A. No. 795 of 2012 in Cr. Misc. No. 44576 of 2009 and I.A. No. 797 of 2012 in Cr. Misc. No. 18385 of 2009. By interlocutory application it has been prayed to amend the main application up to following extent:-

(i) For quashing of the entire criminal proceedings arising out of RC 19(S)/88 Trial No. 70/2008 including the order taking cognizance dated 5.3.1991 which is been pending in the court of Namita Chandra, Special Judicial Magistrate, C.B.I.

(ii) For alternatively remanding the case to the court below with direction to dispose of the discharge petition filed by the petitioners after supply of complete police papers to the petitioners separately and after giving them proper opportunity to be heard in the discharge matter on the basis of supplied police papers and the materials.

5. Sri Kashyap, learned counsel for the petitioners in both the cases, has argued that in the case alleged occurrence had taken place in the year 1985, and thereafter, F.I.R. was lodged in the year 1988. Subsequently, charge-sheet in the case was submitted in the year 1990. Thereafter, due to laches on the part of

prosecution the case dragged inordinately, and till date, according to learned counsel for the petitioners, entire police papers have not been supplied to all the accused persons. He submits that it is a glaring case of example of infringement of right of speedy trial guaranteed under Article 21 of the Constitution of India, and as such, on the ground of pendency of the case since long, the entire criminal proceeding is liable to be set aside. While assailing the proceeding, it has also been, argued, that C.B.I. has maliciously proceeded against the petitioners only. However, the C.B.I. has given clean chit to employees/officers of the Insurance Company, and as such, on the ground of malicious prosecution also, the entire proceeding is liable to be set aside. Learned counsel has further argued that there are unimpeachable documents on record of the present case particularly, in first case i.e. Cr. Misc. No. 44576 of 2009, which shows innocence of the petitioners. Virtually, according to learned counsel for the petitioners, on perusal of those documents it is evident that the allegation levelled either in the F.I.R. or in the charge-sheet was baseless. He has heavily relied on Annexure-"6 Series" of Cr. Misc. No. 44576 of 2009. According to learned counsel for the petitioners, this Court, even while exercising power u/s 482 of the Code of Criminal Procedure, is required to look into and rely on those documents for coming to the conclusion that no case is made out against either of the petitioners. While elaborating the grounds for quashing the prosecution on the ground of delay, learned counsel has heavily relied on a judgment of the Apex Court reported in Vakil Prasad Singh Vs. State of Bihar, . He submits that in the said case entire criminal prosecution was quashed on the ground of inordinate delay. He submits that case of petitioners stands on similar footing. He has also relied on Abhay Kumar and Others Vs. State of Bihar and Another, . However, at the time of argument, learned counsel for the petitioners does not disputes that law on the point of interference with a criminal proceeding on the ground of delay was settled long back by a Constitution Bench of the Supreme Court in a case reported in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., . He also does not disputes the law laid down by a larger Constitution Bench of the Apex Court in a case reported in P. Ramachandra Rao Vs. State of Karnataka, .

6. Learned counsel for the petitioners has argued that in this case delay has occurred completely due to the laches on the part of the prosecution, and as such, benefit should be given to the petitioners. While elaborating laches on the part of prosecution he has specifically submitted that on 1.9.1993 the case record was transferred from the Court of Special Judicial Magistrate (C.B.I.) to the Court of Chief Judicial Magistrate, Patna, and unnecessarily, record was kept pending in the court of C.J.M. from 1.9.1993 till 19.8.2011. Only on 19.8.2011, by assigning reason and disclosing the laches on the part of prosecution, learned Chief Judicial Magistrate transferred the record to the Court of Special Judicial Magistrate (C.B.I.) and record of the case was received in the court of Smt. Namita Chandra, Special Judicial Magistrate (C.B.I.) on 20.12.2011. However, on 28.12.2012, Smt. Namita Chandra tendered resignation, and as such, again no appropriate progress in the case could take place. He further submits that from

the order sheet dated 21.10.2008 it is evident that record was kept pending for producing case diary and relevant papers by the Prosecuting Agency. It remained pending for said purpose from 21.10.2008 to 15.2.2011. It was submitted that recently, even after filing of the amendment petition in the present case, which was filed on 24th April, 2012, petitioners have filed second discharge petition on 12.6.2012 before the learned Magistrate. Learned counsel for the petitioners has relied on Anita Malhotra Vs. Apparel Export Promotion Council and Another, as well as Harshendra Kumar D. Vs. Rebatilata Koley Etc., . In sum and substance, it was submitted that documents which have been brought on record particularly, Annexure-"6-Series" to the first case, may be examined and relied for deciding the issue.

7. Learned counsel for the petitioners has categorically placed Annexure-"6-Series", which is a typed copy of purported deposition in a civil case i.e. Money Suit No. 17 of 1990. He submits that three charge sheeted witnesses namely Surajdeo Singh (charge-sheet witness no. 12), Kumbh Karn Singh (charge-sheet witness no. 10) and Jamindar Nath Verma (charge-sheet witness no. 11) have deposed in Money Suit and explained that death of Maheshwari Devi had occurred due to fall while she was plucking papaya. He submits that three witnesses; who are charge-sheeted witnesses, in a proceeding in Money Suit have made categorical statement that death of Maheshwari Devi was accidental and once it is established that death was accidental, the prosecution case alleging therein that in a case of natural death the petitioners had, for the purposes of obtaining insurance policy, shown as accidental death the case comes to an end.

8. According to learned counsel for the petitioners on the basis of statement of aforesaid three witnesses entire C.B.I. case comes to an end, and as such, even order of cognizance and entire criminal proceeding is liable to be set aside by this Court.

9. Regarding supply of police papers, learned counsel has relied on Ramesh Kumar Vs. The State of Bihar . He has specifically referred to paragraph nos. 5, 8 & 17 of the said judgment, which is reproduced hereinbelow:-

5. One must, at all times, be conscious that the essence of Article 21 of Constitution of India is also securing for its citizens, a trial, which is just and fair, of which, I would hasten to add, transparency is an essential core. Viewing Section 207 Cr.P.C. in this background, from the standpoint of an accused, one will realize that the purpose of 207 Cr.P.C. is to ensure that the accused is apprised of the exact nature of material, that has appeared against him during investigation, so as enable him, to plead the prosecution was baseless, and, pray for discharge and/or to give him prior notice of the same to lead his defence during trial.

8. It is also amply clear that, apart from the F.I.R., police report, confessions it is only the statements of persons the prosecution proposes to examine as

witnesses and the documents it proposes to rely upon, mentioned in Column 10 of the charge-sheet, and forwarded u/s. 173(5) Cr.P.C. that are to be supplied to the accused. Any other document, in custody of the Investigating Agency, if not forwarded u/s. 173(5), can neither be relied upon by the prosecution subsequently during trial, as it would prejudice the accused, nor can the accused demand its supply since it will not come within the purview of Section 173(5) Cr.P.C. Under the circumstances, it is held, in totally unambiguous terms, that even while the statute mandates supply of all documents mentioned in Column 10 of the charge-sheet, since forwarding the same presupposes that the prosecution is going to rely on them, the Court is not duty bound to supply each and every document collected during investigation. Thus, even while the prosecution cannot be permitted to tease the accused by withholding certain documents, the accused cannot claim an absolute right over every document collected during investigation. Such mandatory provisions are reassuring reminders that the equality clause in the Constitution is inherently imbibed in the procedural code, by giving both the parties an equal opportunity to perform their respective duties--the Prosecutor to prosecute and the Defence to defend. Both parties are placed on a level-playing ground, without giving an unfair advantage to either of them.

17. Further, in cases originating from reports of Vigilance and C.B.I., since the entire case is based on documentary evidence, and, most often than not, furnishing documents to the accused becomes a clash of egos between the two, this Court directs the C.B.I. and Vigilance Department to prepare one set of legible documents properly indexed/paginated mentioned in Column 10 of the charge-sheet, for each of the accused and submit the same in the court alongwith the chargesheet/final form. This would greatly enhance the speed of trial and would work in favour of all the parties concerned and thus achieve the purpose of the constitutional mandate of a speedy trial which is just and fair.

10. On aforesaid grounds, it was prayed to set aside entire criminal proceeding. It is relevant to be noted that while learned counsel for the petitioners was referring Annexure-"6--Series" to the first petition, he candidly admitted that he has not seen the statement of aforesaid three witnesses i.e. Surajdeo Singh, Kumbh Karn Singh and Jamindar Nath Verma, which was recorded during investigation by the C.B.I. u/s 161 of the Code of Criminal Procedure.

11. Sri Bipin Kumar Sinha, learned Standing Counsel for Central Bureau of Investigation, has vehemently opposed the prayer of the petitioners. It was submitted that in this case after submission of charge-sheet, cognizance order was passed on 5.3.1991. He submits that after supply of police papers and completion of procedure u/s 207 of the Code of Criminal Procedure, the case reached to the stage of charge, and thereafter, except petitioner-Krishna Singh, all other accused persons filed petition u/s 239 of the Code of Criminal Procedure for their discharge. Prior to filing of discharge petition, petitions were also filed for supplying documents, and against one of the orders, petitioners had

preferred a revision petition before the learned Sessions Judge. However, in the meanwhile, after hearing the parties on discharge petition, learned Magistrate assigning a detailed reason, on 22.7.1995, rejected the discharge petition and fixed the case to 28.7.1995 for framing of charge with a direction to all the accused persons to remain physically present. On the next date i.e. on 28.7.1995, on behalf of accused persons learned court below was informed that they were intending to move High Court against order dated 22.7.1995. Even after rejection of discharge petition, none of the petitioners ever assailed the order, whereby, their discharge petitions were rejected. But, again and again, they made a prayer for supplying police papers. Thereafter, on 10.10.1996, again, a detailed order was passed by the learned Magistrate, which is evident to show that relevant papers were supplied. However, the learned court further directed for supplying certain papers.

12. C.B.I. counsel has specifically referred to order dated 28.7.2000, 15.9.2000 & 22.11.2000 to show that again entire police papers were received by learned counsel for the accused persons. He has submitted that order sheet shows the receiving by the concerned Advocates. He further submits that, subsequently, the learned Chief Judicial Magistrate noticed that for conducting C.B.I. cases it is required to transfer the case to the Court of Magistrate specially assigned to deal with the C.B.I. cases, and finally, in the year 2011, record was transferred and received in the Court of Special Judicial Magistrate (C.B.I.). However, since the Presiding Officer had tendered resignation, no appropriate progress could take place in the case. According to learned Standing Counsel for the C.B.I. delay was not at all attributable to the prosecution, rather, delaying tactics were adopted by the accused persons for keeping the case pending for an indefinite period. Learned C.B.I. counsel while referring to Sajjan Kumar Vs. Central Bureau of Investigation, submits that on the ground of only delay prosecution may not be set aside. He submits that merit is also required to be examined as well as it has to be seen as to whether the entire delay was attributable to the prosecution or not. According to learned Standing Counsel for C.B.I. it was not a case of laches on the part of prosecution. While replying question of mala fide, Sri Sinha submits that in the entire petition the petitioners have not at all whispered regarding mala fide. However, learned counsel for the petitioners has objected to his submission and he submits that in the main petition it has been disclosed that maliciously employees/officers of Insurance Company were exonerated. Sri Sinha further submits that this Court may not examine or draw any inference on the basis of Annexure-"6-Series" to the first petition. He submits that those points are considered as defence, and at this stage, petitioners may not be allowed to take any defence. He submits that those statements can be looked into or examined at defence stage not at a preliminary or interlocutory stage of a criminal case. In support of his argument he has heavily relied on a judgment reported in State of Orissa Vs. Debendra Nath Padhi, . He has referred to paragraph no. 23 of the said judgment, which is quoted hereinbelow:-

23. As a result of the aforesaid discussion, in our view, clearly the law is that at

the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

13. On this very point he has also relied on Rochiram and Sons Vs. Union of India (UOI) and Others, . Sri Bipin Kumar Sinha, learned C.B.I. counsel has further argued that this is not only case against the petitioners, particularly, petitioner-Krishna Singh. He submits that there is one another case vide R.C. Case No. 26(S) of 1989 in which it was alleged that on the basis of a non-existent person, Sri Krishna Singh had obtained policy amounting to Rs. 36,00,000/-. However, he could not succeed in withdrawing the amount. In that case, the petitioners, after order of cognizance had approached this Court, and in that case also, subsequently, amendment petition was filed challenging the order of framing of the charge. Three petitions were initially filed, vide Cr. Misc. No. 15255 of 2009, Cr. Misc. No. 41298 of 2009 & Cr. Misc. No. 45504 of 2008 against order dated 10.2.1992, whereby, cognizance order was passed. Finally, aforesaid three petitions were dismissed by a Bench of this Court on 26.3.2012, and while dismissing, this Court directed the court below to conclude the trial expeditiously.

14. So far submission made by learned C.B.I. counsel regarding involvement of some of the accused in another case is concerned, the Court is of the opinion that those facts are not required to be taken note of. In the present case, the Court is required to see as to whether the petitioners have made out a case for quashing of entire criminal proceeding or not. After perusing the F.I.R. and copy of charge-sheet, which has been brought on record in the first case i.e. in Cr. Misc. No. 44576 of 2009, there is no point to doubt the prosecution case nor there is any error in the order of cognizance which was passed long back on 5.3.1991. Moreover, in this case, order of cognizance was passed in the year 1991, which was assailed by the petitioners, by filing present petitions in the year 2009 i.e. after about 18 years. However, during the pendency of this case amendment petitions were filed for amending the relief portion to the extent of quashing of proceeding on the ground of delay, and alternatively, for directing the court below to dispose of the discharge petition filed by the petitioners after supply of complete police papers.

15. I have perused order dated 22.7.1995, whereby, discharge petitions were dismissed assigning detailed reason. The learned Magistrate has categorically noticed that entire police papers were supplied, and as such, the Court is of the opinion that there was no point for entertaining any petition filed by the accused persons for further supply of documents. Once in a case supply of police papers u/s 207 of the Cr.P.C. is complete and case arrives to the stage of charge, at subsequent stage, such prayer i.e. supply of documents was not required to be entertained. The discharge petition, filed in the year 1995, is indicative of the fact that Police papers were supplied. Even though entire police papers were supplied, the accused persons, one way or the other, succeeded in persuading

the court for passing order for supply of police papers, and thereafter, from order dated 28.7.2000, 15.9.2000 & 22.11.2000, it is evident that police papers were received by counsel for accused persons. Only thing it has been noticed that Revisional Court i.e. Sessions Judge had disposed of revision petition filed by some of the accused persons whereby the Revisional Court had granted liberty to peruse voluminous document which was of 490 pages. Even u/s 207 of the Cr.P.C. the prosecution is at liberty to ask for allowing accused to inspect voluminous documents instead of supplying such documents. Supply of police papers u/s 207 of the Cr.P.C. is required for the purposes that during trial the accused persons may not be deprived from any document on which prosecution proposes to rely. In warrant case after supply of police papers u/s 207 Cr.P.C. case comes to the stage of charge. After compliance of Section 207 of the Cr.P.C. the accused can avail remedy by way of filing a discharge petition u/s 239 of the Code of Criminal Procedure. Once remedy u/s 239 of the Cr.P.C. is availed and exhausted, thereafter charge is required to be framed. In this case in the year 1995 itself after rejection of discharge petition, case was fixed for charge, and as such, on the date fixed for charge, accused persons were required to remain physically present for framing of the charge. However, one way or the other, the matter was dragged for such a long time. The conduct of the accused persons, which transpires from perusal of the order sheet of the Court below, which was produced by C.B.I. counsel and kept on record of this case by its order, dated 28.6.2012, it appears that the accused persons were also responsible for delaying the matter. Even after acceptance of pardon in respect of one of the accused namely, Dr. Rajendra Thakur, who had granted fictitious death certificate in absence of dead body of said Maheshwari Devi, the petitioners had intimated the learned court below that they were proposing to assail the said order. It was assailed vide Cr. Misc. No. 2945 of 1992, and was subsequently dismissed. Even recording of statement of Approver (Dr. Rajendra Thakur) was vehemently opposed by the accused persons. This shows delaying tactics adopted by the accused persons. Record further shows that, despite the fact that case was fixed for framing of the charge and all the accused persons were directed to remain physically present, simultaneously all the accused persons, purposely, never appeared, and as such, framing of charge was delayed. Of course, order shows that C.B.I./the Prosecuting Agency, had also not produced certain documents as well as case diary on certain dates, but those facts are not sufficient to come to a definite conclusion that laches was entirely on the part of prosecution for delay in conclusion of the trial. Order sheet indicates that some procedural delay has also occurred. In Abdul Rehman Antulay case (supra) the Apex Court in paragraph no. 54 has clarified the position regarding speedy trial. It would be appropriate to quote the same, which is as follow:-

54. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Now it possible to lay down any hard and fast rules. These propositions are:-

1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how this Court has understood this right and there is no reason to take a restricted view.

3. The concerns underlying the right to speedy trial from the point of view of the accused are:-

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

4. At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the Interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is--who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex parte representation.

5. While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of

the court concerned, prevailing local conditions and so on--what is called, the systematic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in *Barker* "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same ideal has been stated by White, J. in *U.S. vs. Ewell*, (1966) 15 Law Ed 2d 627 , in the following words: "the sixth amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

7. We cannot recognize or give effect to, what is called the "demand" rule. An accused cannot try himself; he is tried by the Court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in U.S.A., the relevance of demand rule has been substantially watered down in *Barker* and other succeeding cases.

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

9. Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order-- including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-- as may be deemed just and equitable in the circumstances of the case.

10. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is

primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of U.S.A. 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 in effectuates 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.

16. Again this question was raised, and finally, decided by a larger Constitution Bench of the Apex Court. In P. Ramachandra Rao case (supra) a larger Constitution Bench has approved the law laid down by the Apex Court in Abdul Rehman Antulay case (supra). It would be appropriate to quote paragraph no. 29 of P. Ramachandra Rao case (supra) as follow:-

29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [as modified in Common Cause (II)] and Raj Deo Sharma (I) 1 and (II) 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 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 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 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), Raj Deo Sharma (I) and Raj Deo Sharma (II) 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), Raj Deo Sharma case (I) and (II). 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 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 u/s 482 CrPC 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.

We answer the questions posed in the orders of reference dated 19.9.2000 and 26.4.2001 in the abovesaid terms.

17. Accordingly in sum and substance, if a question is raised regarding infringement of right of speedy trial, only question is required to be asked and answered is as to who was responsible for delay. After perusal of the record it is difficult to come to the conclusion that delay was completely on the part of prosecution. Some delay has occurred due to laches or tactics adopted by the accused persons, some are procedural and to some extent it can be said that prosecution had also not proceeded actively. But it is not a case in which prosecution can be set aside on the ground of delay. In view of P. Ramachandra Rao case (supra) in such situation the trial court is competent to see early conclusion of the trial. Similarly, this Court while exercising power u/s 482 of the Code of Criminal Procedure or under Article 226 or 227 of the Constitution of India can pass appropriate order so that trial may come to end without further delay. Fact remains that present case is pending since long, and as such, to protect the right of petitioners as well as to do complete justice, it would be desirable to direct the court below to proceed with the case expeditiously. In the entire petition I do not find any material to interfere with the proceeding, and as such, both the petitions stand dismissed.

18. In this case, earlier, reports were called for from the Registrar General of the Patna High Court as to whether the Court of Special Judicial Magistrate, C.B.I., Patna, is still vacant or not. However, finally, it has been intimated that power to conduct C.B.I. cases has already been delegated to one Sri Sunil Kumar No.-II, Judicial Magistrate, Patna, to conduct C.B.I. cases.

19. Similarly, in the second case i.e. Cr. Misc. No. 18385 of 2009, earlier, a report was called for regarding delay. The report in the case has been received and kept on record. The report dated 4th July, 2011, is also indicative of the fact that prosecution was not solely responsible for delay in conclusion of the trial but the accused persons had attributed their role in delay.

20. While dismissing the cases, it is desirable to direct the learned Special Judicial Magistrate (C.B.I.). Patna, to expeditiously proceed with the case, so that, case may come to its logical end without any further delay. The learned Magistrate is required to complete the charge matter/ framing of the charge within a period of two months from the date of receipt/production of a copy of this order, and thereafter, within a period of seven months he is directed to conclude the trial. While proceeding with the case, learned Magistrate is required to proceed with the case at least thrice in a week. C.B.I. is also directed to render all assistance to the court for early disposal of the case. If on the date of framing of the charge all the accused persons are not present, in such situation, the learned Magistrate may frame charge in piecemeal, but, in any event, within two months charges must be framed since discharge petition was rejected long back in the year 1995.

21. With above observation and direction, both the petitions stand dismissed. Let a copy of this order be sent to the Superintendent of Police (C.B.I.), Patna through its Standing Counsel and order may also be communicated to the court below forthwith.