

(2016) 09 RAJ CK 0084

In the Rajasthan High Court

Case No : Criminal Misc. (Pet.)(Crlmp) No. 1494 of 2016.

**Mamta D/o Parasram, by caste Brahmin, R/o Village Ranera, Tehsil Sojat
City, District Pali - Petitioner @HASH State of Rajasthan**

Date of Decision : 05-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 182(2), Section 482
Penal Code, 1860 (IPC) — Section 109, Section 494

Citation : (2016) 4 CriLR 2014 : (2016) 4 Crimes 463 : (2016) 4 RLW 2870

Hon'ble Judges : P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. Jagdish Choudhary and Mr. Pritam Solanki, Advocates, for the Petitioner; Mr. V.S. Rajpurohit, Public Prosecutor, for the State; Mr. Mahesh Bora, Sr. Advocate with Mr. Dharmendra Jasmatiya and Mr. G.K. Sharma, Advocates, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mr. P.K. Lohra, J. - Accused-petitioners, facing trial for offence under Section 494/109 IPC, have laid this misc. petition under Section 482 Cr.P.C. to assail impugned order dated 20th of May 2016 passed by Sessions Judge, Jodhpur Metropolitan (for short, "learned revisional Court"), whereby their revision is rejected. By the order impugned, learned revisional Court has upheld order dated 21st of March 2016 passed by Metropolitan Magistrate, Jodhpur Metropolitan (for short, "learned trial Court").

2. The facts apposite for purpose of this petition are that second respondent complainant laid a criminal complaint against her husband Ghanshyam Lal and all the petitioners with a specific allegation that Ghanshyam Lal has contacted second marriage during subsistence of a valid marriage with her. It is further averred in the complaint that all the petitioners participated in the said marriage ceremony in spite of the fact that they had knowledge about subsistence of a valid marriage between her and Ghanshyam Lal. As such, the complaint attributed offence under Section 494/109 IPC against all the petitioners.

3. At the threshold, the complaint was filed in the year 1996 and case is still pending consideration before the learned trial Court. The learned trial Court, after taking cognizance for the aforesaid offence against the petitioners, proceeded to frame charge by order dated 21st of March 2016. At the time of framing charge, on behalf of petitioners, objections were raised about jurisdiction of the learned trial Court on the anvil of sub-section (2) of Section 182 Cr.P.C. besides the objection that at pre-charge stage evidence tendered by the complainant is lacking requisite sting to frame aforesaid charge against them. The pleas sought to be raised on behalf of petitioners including the main accused did not find favour of the learned trial Court and consequently while rejecting all these contentions, the learned trial Court proceeded to frame charge against all the accused persons including the petitioners.

4. Being aggrieved by the said order, main accused as well as all the other accused jointly filed a revision petition before the learned revisional Court and the learned revisional Court upon examining the record fully concurred with the order passed by learned trial Court. On a threadbare examination of the correctness, legality or propriety of the order of learned trial Court, the learned revisional Court recorded its affirmation for the said finding and rejected the revision petition. Interestingly, the main accused has not assailed the order passed by learned revisional Court but the petitioners, who are co-accused, have approached this Court by invoking inherent powers enshrined under Section 482 Cr.P.C.

5. Learned counsel for the petitioners submits that there is no semblance of proof about commission of alleged offence within the jurisdiction of learned trial Court as per sub-section (2) of Section 182 Cr.P.C. and therefore the impugned revisional order as well as order passed by the learned trial Court cannot be sustained. Learned counsel would contend that if the trial is allowed to proceed in the matter, it would obviously result in abuse of the process of the Court. Learned counsel further submits that for an offence under Section 494 IPC prosecution by second wife i.e. petitioner No.1 is not permissible and therefore if the impugned orders are allowed to stand the same would result in miscarriage of justice. Learned counsel strenuously urged that if the pre-charge evidence is meticulously examined and more particularly the testimony of solitary eye witness, then it would ipso facto reveal that ingredients of bigamy are not forthcoming and therefore continuing trial on the basis of such hearsay evidence is a glaring example of abuse of the process of the Court, which cannot be countenanced. Lastly, the learned counsel has urged that all the accused petitioners are facing the agony of trial for last more than two decades and therefore it is a fit case wherein proceedings in the criminal case pending before learned trial Court be clogged perpetually vis-`-vis them to protect their sacrosanct fundamental right enshrined under Article 21 of the Constitution. In support of his various contentions, learned counsel for the petitioners has placed reliance on following judgments:

Pankaj Kumar v. State of Maharashtra and ors. [(2008) 16 SCC 117]

Prabhakar s/o Krushnaji Deshmukh v. Subhash s/o Jasraj Karnawat and Anr. [2004 All MR (Cr.) 710].

Lalu Prasad @ Lalu Prasad Yadav v. State of Bihar through CBI (AHD) Patna (2007 All SCR 1).

Ramesh s/o Mohanlal Bhutada, Advocate and anr. v. State of Maharashtra and Ors. [2011 (6) Mh L.J. 167]

Smt. Manju Saxena v. Dal Chand Verma and ors. [(1991) 2 RLR 310]

N. Poongodi and Ors. v. Irulappan [2008 (1) MWN (Cr.) 14.

Bhaurao Shankar Lokhande v. State of Maharashtra (AIR 1965 SC 1564).

Laxmi Devi v. Satya Narayan and Ors. [(1994) 5 SCC 545].

Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh [1971 (1) SCC 864]

6. Per contra, learned Senior Counsel appearing for the complainant submits that instant petition is by co-accused and as no endeavour is made by main accused to challenge the impugned order, plea of jurisdiction at their behest is not sustainable. Learned Senior Counsel would contend that essentially the offence of 494 IPC is attributed to the main accused and the petitioners are charged for offence under Section 494/109 IPC as such objection of the petitioners regarding jurisdiction is superfluous and wholly untenable. Learned counsel further submits that objection of jurisdiction at the stage of framing charge is not sustainable. While countering the arguments of the learned counsel for the petitioners that second wife cannot be prosecuted for offence under Section 494 IPC, learned counsel would contend that the petitioners are closely related to the main accused and have participated in his second marriage having full knowledge about subsistence of his first marriage, and the first petitioner has also entered into matrimony despite having knowledge, cannot claim immunity from framing of charge under Section 494/109 IPC. While joining issue with the petitioners on pre-charge evidence, learned Senior Counsel submits that the said evidence cannot be equated with post-charge evidence and at the time of framing of charge Court is required to examine whether prima facie offence is made out inasmuch as at this stage culpability of the accused persons is not determined by the Court. Learned counsel has also urged that issue of jurisdiction has not been raised at the time of taking cognizance against the petitioners and therefore this objection at this belated stage cannot be sustained. Lastly, learned Senior Counsel submits that against framing of charge revisional Court has also declined to interfere and therefore in the backdrop of facts and circumstances of the instant case no second revision is desirable in exercise of inherent powers of this Court.

7. Learned Public Prosecutor has also supported the impugned order and has vehemently urged that instant one is not a fit case wherein inherent powers can

be exercised for upsetting revisional order inasmuch as the order impugned has not occasioned failure of justice.

8. I have heard learned counsel for the parties and perused the impugned order as well as materials available on record.

9. At the outset, it may be observed that learned counsel for the petitioners has vociferously canvassed the argument about jurisdiction of the trial Court and relied on the judgment in *Lalu Prasad @ Lalu Prasad Yadav* (supra) rendered by Supreme Court and some other judgments. Therefore, at the threshold I feel persuaded to examine legal precedents in the backdrop of facts of the instant case.

10. There cannot be two opinions that question of jurisdiction, if raised, is required to be adjudicated by the trial Court. Essentially, the Supreme Court in *Lalu Prasad* (supra) examined a case under the Prevention of Corruption Act and therefore in that background the issue relating to jurisdiction was also considered and the Court held:

Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if un-rebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context, it is pertinent to point out that even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge."

But where the question of jurisdiction is raised and the trial Court is required to adjudicate that issue, it cannot be said that reasons are not to be recorded. In such a case reasons relate to question of jurisdiction and not necessarily to the issue relating to framing of charge. In such a case reasons dealing with a plea relating to jurisdiction have to be recorded.

11. Therefore, as mandated by the Supreme Court, at the time of framing charge, the Court is required to record reasons dealing with a plea relating to jurisdiction. In that background, if the impugned order passed by the learned revisional Court as well as learned trial Court is examined, then it would ipso facto reveal that both the Courts have recorded reasons in the light of sub-section (2) of Section 182 Cr.P.C. and consequently this judgment cannot render any assistance to the petitioners.

12. In the case of *Ramesh* (supra), which was a case under the provisions of

Protection of Women from Domestic Violence Act 2005, Nagpur Bench of Bombay High Court has interpreted word "residence" and held that it means both permanent dwelling as well as temporary living in a place. As such, this judgment cannot render any assistance to the petitioners.

13. In case of Smt. Manju Saxena (*supra*), a coordinate Bench of this Court has opined in clear and unequivocal terms that according to sub-section (2) of Section 182 Cr.P.C. prosecution can be launched against husband by the first wife for offence under Section 494 IPC at a place where she permanent resides after commission of the offence. Upon meaningful consideration of the ratio decidendi of this judgment, it cannot render any assistance to the petitioners rather it fully justifies launching of prosecution by the respondent-complainant at a place where she is permanently residing after commission of the offence.

14. The judgment of Madurai Bench of Madras High Court in N. Poongadi & Ors. (*supra*) is also factually distinguishable inasmuch as in that case prosecution under Section 494 and 406 IPC is launched by first wife before Judicial Magistrate, Srivilliputtur without there being any whisper that she last resided at that place. In that background, if the complaint of the complainant is examined then it would ipso facto reveal her permanent abode being at Jodhpur at the time of filing complaint. As such, this judgment is also of no avail to the petitioners. It is also noteworthy that the complaint against petitioners and the main accused is pending since last almost two decades and no objection as such was raised at their behest at the time of taking cognizance of offence against them. Therefore, Court cannot lose sight of this aspect of the matter coupled with the fact that essentially the petitioners are prosecuted for offence under Section 494/109 IPC and admittedly the main accused has not made any endeavour to question the impugned order. Thus, in totality, the objection about jurisdiction on behalf of co-accused persons (petitioners) is wholly untenable.

15. The next contention of the petitioners is about charge framed against them. In this behalf, suffice it to observe that at the time of framing charge the Court is not required to screen evidence or to apply the standard whether the prosecution will be able to prove the charge against accused at trial. The only requirement for framing of charge is that the Court concerned must be equipped with at least prima facie material to show that the person who is sought to be charged is guilty of the offence alleged against him.

16. Allahabad High Court in case of Brahmeshwar Rai v. State of U.P. (1984 Cri LJ 1676) has held that a charge cannot be interfered with when prima facie material for framing charge exists.

17. In Prabhakar (*supra*), Aurangabad Bench of Bombay High Court made a distinction for framing charge in respect of cases instituted on a police report and the cases instituted otherwise than on police reports. While dilating on the material difference between these two types of cases, the Court has embarked on a particular requirement that in cases instituted otherwise on police report

assessment of evidence of witnesses examined by the complainant is necessary in order to find whether evidence on record, which if un-rebutted, is likely to result in conviction. After examining the evidence available on record, it is clearly apparent that both the courts below have made sincere endeavour in making assessment of the evidence of witnesses and therefore this judgment too cannot render any assistance to the petitioner and on the strength of ratio decidendi of this judgment impugned orders cannot be categorized as infirm.

18. There remains no quarrel that evidence recorded at pre-charge stage is required for the purpose of framing charge against accused persons and on the strength of that evidence conviction cannot be recorded. As such, the evidence recorded at the pre-charge stage can be examined by the Court prima facie for framing charge against accused persons. Moreover, at this stage, it is rather difficult to comprehend that complainant is not equipped with cogent and convincing evidence to prove charge against main accused and the co-accused petitioners. The argument of learned counsel for the petitioners that the evidence recorded at pre-charge stage is insufficient to prove ingredients of bigamy is per se an ambitious plea inasmuch as the complainant has categorically stated that her husband Ghanshyam, the main accused, has contacted second marriage during subsistence of first marriage and other eye witness Sheshmal has also supported the version of complainant by stating that he has witnessed the second marriage of main accused Ghanshyam.

19. While it is true that for bringing home guilt against the main accused for offence under Section 494 IPC concrete proof about second marriage is necessary and as such the judgments of the Supreme Court, on which the learned counsel for the petitioners has placed reliance, are significant but then at this stage when the trial has simply commenced inasmuch as only charge has been framed, this premature plea of the petitioners about absence of proof of second marriage is wholly tenable. The culpability of the main accused for offence under Section 494 IPC and the petitioners for offence under Section 494/109 IPC is yet to be determined and that can only be made after conclusion of the evidence of the complainant. The Court is constrained to observe that at this stage this sort of plea cannot be countenanced as it amounts to prejudging the evidence of the complainant which shall be tendered during trial of the case. Therefore, the argument of the learned counsel regarding framing of charge and absence of proof about bigamy are bereft of any substance and merits rejection at this stage.

20. As regards the plea sought to be raised by the petitioners, more particularly vis-à-vis petitioner No. 1, that she being alleged second wife cannot be prosecuted for offence under Section 494 IPC, suffice it to observe that her prosecution under Section 494/109 IPC is not barred for the simple reason that as per pre-charge evidence she has entered into matrimony with main accused Ghanshyam having knowledge about subsistence of his first marriage. Therefore, argument of the learned counsel for the petitioners in this behalf also merits

outright rejection at this stage. The overall effect of repudiating all these arguments touching merits of the case has paved the way to hold that impugned orders are not infirm warranting inference in exercise of inherent powers. There is apparently no reason to upset the impugned orders for preventing abuse of the process of the Court or otherwise to secure ends of justice.

21. The last argument of the learned counsel for the petitioners, that the case is pending since 1996 and since then almost two decades have elapsed, therefore, prolonging trial in the matter violates the rights of the petitioners enshrined under Article 21 of the Constitution of India, is significant and deserves cognizance of the Court to some extent. It goes without saying that right to speedy trial is fundamental right of an accused as well victim, however, it cannot be said that merely because the trial is pending since long, the entire proceedings as such are liable to be quashed.

22. In Pankaj Kumar (supra), Supreme Court has examined the fundamental right of speedy trial under Article 21 of the Constitution and also examined the scope and ambit of the powers of the High Court under Section 482 Cr.P.C. or Article 227 of the Constitution. The Court held:

"The scope and ambit of powers of the High Court under Section 482 CrPC or Article 227 of the Constitution has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, we consider it unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provisions are very wide but these should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. (See *Janata Dal v. H.S. Chowdhary*, *Kurukshetra University v. State of Haryana* and *State of Haryana v. Bhajan Lal*)

Although in *Bhajan Lal* case (supra), the Court by way of illustration, formulated as many as seven categories of cases, wherein the extraordinary power under the afore stated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.

The purport of the expression "rarest of rare cases" has been explained very recently in *Som Mittal*. Speaking for the three-Judge Bench, Hon'ble the Chief Justice has said thus: (SCC pp.580-81, para 9)

"9. When the words "rarest of rare cases" are used after the words "sparingly and with circumspection" while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words "sparingly and with circumspection". They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection."

Bearing in mind the above legal position, we are of the opinion that, for the reasons stated hereafter, the ends of justice require that prosecution proceedings in the instant case be quashed."

23. While embarking on fundamental right under Article 21 of the Constitution, the Court held:

"The exposition of Article 21 in Hussainara Khatoon (1) case was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) the right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, the number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on-what is called, the systemic delays; (v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors-"balancing test" or "balancing process"-and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking,

where the court comes to 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 and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis."

24. The seven Judges Bench of Supreme Court in *P. Ramachandra Rao v. State of Karnataka* [(2002) 4 SCC 578] has considered fundamental right under Article 21 of the Constitution for speedy trial. The Court opined that question of delay has to be decided by the Court having regard to the totality of circumstances of an individual case. Speaking for the Majority, the Court held:

The primary function of the judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by Legislation. Patrick Devlin in *The Judge* (1979) refers to the role of the Judge as lawmaker and states that there is no doubt that historically, judges did not make law, at least in the sense of formulating it. Even now when they are against innovation, they have never formally abrogated their powers; their attitude is; "We could if we would but we think it better not." But as a matter of history did the English Judges of the golden age make law? They decided case which worked up into principles. The Judges, as Lord Wright once put it in an unexpectedly picturesque phrase, proceeded "from case to case, like the ancient Mediterranean mariners, hugging the coast from point to point and avoiding the dangers of the open sea of system and science". The golden age Judges were not rationalisers and, except in the devising of procedures, they were not innovators. They did not design a new machine capable of speeding ahead; they struggled with the aid of fictions and bits of procedural string to keep the machine on the road.

Professor S.P. Sathe, in his recent work (Year 2002) "*Judicial Activism in India - Transgressing Borders and Enforcing Limits*", touches the topic "Directions: A New Form of Judicial Legislation". Evaluating legitimacy of judicial activism, the learned author has cautioned against Court "legislating" exactly in the way in which a legislature legislates and he observes by reference to a few cases that the guidelines laid down by court, at times, cross the border of judicial law-making in the realist sense and trench upon legislating like a Legislature.

"Directions are either issued to fill in the gaps in the legislation or to provide for matters that have not been provided by any legislation. The Court has taken over the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional court." (p.242).

"In a strict sense these are instances of judicial excessivism that fly in the face of the doctrine of separation of powers. The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the existing law. In reality such watertight separation exists nowhere and is impracticable. Broadly, it means that one organ of the State should not perform a function that essentially belongs to another organ. While lawmaking through interpretation and expansion of the meanings of open-textured expressions such as "due process of law", "equal protection of law," of "freedom of speech and expression" is a legitimate judicial function, the making of an entirely new law.. through directions.... is not legitimate judicial function." (p.250).

Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32 21 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated in a given case or set of cases, depending on facts brought to the notice of court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.

The other reason why the bars of limitation enacted in Common Cause (I), Common Cause (II) and Raj Deo Sharma (I) and Raj Deo Sharma (II) cannot be sustained is that these decisions, though two or three-Judge Bench decisions, run counter to that extent to the dictum of the Constitution Bench in A.R. Antulay case and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well settled principle of precedents which has crystalised into a rule of law is that a bench of lesser strength is bound by the view expressed by a bench of larger strength and cannot take a view in departure or in conflict therefrom. We have in the earlier part of this judgment extracted and reproduced passages from A.R. Antulay case. The Constitution

Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceedings or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix any time-limit for trial of offences. Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution, this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed upto a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay. In Kartar Singh case the Constitution Bench while recognising the principle that the denial of an accused's right of speedy trial may result, in a decision to dismiss the indictment or in reversing of a conviction, went on to state,

"92. Of course, no length of time is per se too long pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors-(1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay." (SCC pp. 639-40, para 92).

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) 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 strait-jacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalisation

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 decided whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such timelimits 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.

25. Supreme Court, in Mangal Singh v. Kishan Singh [(2009) 17 SCC 303], while discussing the facets of speedy trial, opined that it is not an exclusive right of the accused and right of a victim for the same cannot be underplayed. The Court held:

"?...Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence."

26. In J. Jayalalithaa and others v. State of Karnataka and others [(2014) 2 SCC 401], Supreme Court has again reiterated that fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. While dilating on the concept of fair trial, the Court observed:

"Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not about over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right

also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution. "No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the *raison d'être* in prescribing the time frame" for conclusion of the trial."

27. The Supreme Court, in its recent pronouncement in case of *State of Haryana v. Ram Mehar and others etc.* (Criminal Appeals No. 805-806 of 2016, decided on 24.08.2016), while considering earlier judgments on the concept of fair trial, has observed:

"The decisions of this court when analysed appositely clearly convey that the concept of the fair trial is not in the realm of abstraction. It is not a vague idea. It is a concrete phenomenon. It is not rigid and there cannot be any strait-jacket formula for applying the same. On occasions it has the necessary flexibility. Therefore, it cannot be attributed or clothed with any kind of rigidity or flexibility in its application. It is because fair trial in its ambit requires fairness to the accused, the victim and the collective at large. Neither the accused nor the prosecution nor the victim which is a part of the society can claim absolute predominance over the other. Once absolute predominance is recognised, it will have the effect potentiality to bring in an anarchical disorder in the conducting of trial defying established legal norm. There should be passion for doing justice but it must be commanded by reasons and not propelled by any kind of vague instigation. It would be dependent on the fact situation; established norms and recognised principles and eventual appreciation of the factual scenario in entirety. There may be cases which may command compartmentalization but it cannot be stated to be an inflexible rule. Each and every irregularity cannot be imported to the arena of fair trial. There may be situations where injustice to the victim may play a pivotal role. The centripetal purpose is to see that injustice is avoided when the trial is conducted. Simultaneously the concept of fair trial cannot be allowed to such an extent so that the systemic order of conducting a trial in accordance with CrPC or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The command of the Code cannot be thrown to winds. In such situation, as has been laid down in many an authority, the courts have significantly an eminent role. A plea of fairness cannot be utilised to build Castles in Spain or permitted to perceive a bright moon in a sunny afternoon. It cannot be acquiesced to create an organic disorder in the system. It cannot be acceded to manure a fertile mind to usher in the nemesis of the concept of trial as such. From the aforesaid it may not be understood that it has been impliedly stated that the fair trial should not be kept on its own pedestal. It ought to remain in its desired height but as far as its applicability is concerned, the party invoking it has to establish with the support of established principles. Be it stated when the process of the court is abused in the name of fair trial at the drop of a hat, there is miscarriage of justice. And, justice, the queen of all virtues, sheds tears. That is not unthinkable and we have no hesitation in saying so."

28. Therefore, I am not impressed by the argument of the learned counsel for the petitioners to quash entire proceedings in the matter on his jejune plea of pendency of the case for last about two decades and their alleged violation of Article 21 of the Constitution. In the peculiar facts and circumstances of the case, it is rather difficult to hold that complainant alone is responsible for delaying the proceedings in the matter. The contention of the learned counsel for the petitioners that she has availed judicial remedy before the superior courts at every stage cannot be cited as plausible reason for attributing delay on her part inasmuch as availing remedy envisaged under law is a valuable right of every litigant. Be that as it may, the fact remains that complaint was lodged by the complainant way back in the year 1996 and since then almost two decades have elapsed, I feel persuaded to accede to the prayer of the petitioners for issuing necessary directions to the learned trial Court to proceed with the trial of the case expeditiously with utmost promptitude. This sort of direction is in the interest of both accused and the complainant for safeguarding their fundamental rights enshrined under Article 21 of the Constitution inasmuch as fundamental right of life and liberty also embraces right to speedy trial.

29. The upshot of the above discussion is that I am not inclined to quash the impugned orders and the entire proceedings of the criminal case but for limited indulgence to the petitioners of issuing necessary directions for speedy trial in the matter.

30. The trial Court is expected to undertake proceedings of the trial with utmost expediency and conclude the same as early as possible preferably by the end of the year 2017.

31. Resultantly, petition is dismissed with the observations made supra.