
(1987) 09 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Misc Petition No's. 97 and 102 of 1986 and 38 of 1987

Moti Singh alias Moti Lal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-09-1987

Acts Referred:

Constitution of India, 1950 — Article 134, 21

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 200, 202, 203

Penal Code, 1860 (IPC) — Section 109, 110, 114, 147, 148

Citation : (1988) 1 WLN 179

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Judgement

N.C. Sharma, J.—This order will decide two Criminal Miscellaneous Petitions Nos. 97 and 102 of 1986 u/s 482 C. PC because they arise from the same order of the Additional Chief Judicial Magistrate, Bali dated March 10, 1986, whereby the said Magistrate took cognizance for offences u/s 302, 147, 148, read with Section 149, IPC, in connection with the alleged murder of Hajari Singh deceased.

2. Facts in brief are that on January 8, 1970, Bhopal Singh non-petitioner No. 2 lodged a FIR at P.S., Bali at 4.45 p.m. alleging that on the date of the incident, he along with his brother Prabhu Singh and his guest Hajari Singh and some other persons mentioned there in were sitting in front of his house at about 10 or 11 a.m. At that time 10 petitioners in the above mentioned two miscellaneous petitions and one Hari Singh (since dead) came on the spot armed with swords and lathies with intention to murder Bhopal Singh and his brother Prabhu Singh. Apprehending the trouble, Hajari Singh got up in order to pacify the ten petitioners and deceased Hari Singh but instead of retracting these persons started beating Hajari Singh with slaps and fists. Hajari Singh fell down. Haria and Moti Singh sat over the chest of Hajari Singh and others continued to beat Hajari Singh mercilessly. With great difficulty Hajari Singh was taken out from the clutches of the petitioners. He had become unconscious. Bhopal Singh went to Mundara in order to fetch a compounder from Mundara Aid Post. He brought

Shanker Singh compounder along with him to his village Sev Talab and on examination of Hajari Singh, Shanker Singh declared that the former has expired.

3. The Officer Incharge of Police Station, Bali, on the basis of the First Information Report lodged by Bhopal Singh registered case No. 6 for offences under Sections 302, 147, 148 & 149 IPC. A copy of the First Information Report was sent to the Munsif Magistrate, Bali, which reached him on Jan. 13, 1970. The Police after investigation gave a final report on April 20, 1970. This final report was submitted by the S.H.O. to the Circle Officer, who forwarded it to the Deputy Superintendent of Police on December 24, 1970 and the Deputy Superintendent of Police, Bali forwarded it to the Munsif Magistrate, Bali. In substance, the final report was that a long standing dispute and litigations existed between Bhopal Singh and Sohan Singh and their respective party men. The statements of witnesses recorded during investigation were not found reliable & the Investigating Officer was of the view, on the basis of past conduct and the history sheet in the Police Station on Bhopal Singh & his witnesses that Hajari Singh, while giving an excited speech, suddenly became unconscious and fell down from 'chabutri'. Bhopal Singh and his associates started carrying Hajari Singh in a tractor for treatment. In the way Hajari Singh fell down from the tractor and, therefore, he was brought back to the house of Bhopal Singh. Thereafter the compounder was called and he found that Hajari Singh had expired. On this final report u/s 173 Cr. PC, the Munsif Magistrate, Bali made an endorsement "seen and filed" on April 2, 1971.

4. Nothing happened thereafter until Bhopal Singh filed a protest petition u/s 190 Cr. PC on September 23, 1982 before the Munsif Magistrate, Bali. In the protest petition, Bhopal Singh stated that he was not given any information by the Police about its final report. He came to know of the final report when he was summoned in another Criminal Case No. 59 of 1971 State v. Bhopal Singh and Ors. and when Dr. A.B. Mehta was examined in that case in defence, then he came to know that the Police had made a false final report that Hajari Singh had died on account of heart-failure. The Munsif Magistrate, Bali connected the final report to the protest petition and found that the only endorsement made by his predecessor-in-office on the final report was "seen and filed" and the Magistrate had not passed any order accepting the final report. The Magistrate therefore, heard the matter. On January 10, 1983, he passed an order that when the offence was committed, the place of occurrence was within the jurisdiction of Munsif-Magistrate, Bali but when he was examining the matter in the year 1983, it was Munsif-cum-Judicial Magistrate, Desuri, who had territorial jurisdiction over the place where the alleged offence was committed. He therefore, obtained clarification from the Chief Judicial Magistrate, Pali. It appears that the Chief Judicial Magistrate, informed the Munsif Magistrate, Bali, that he can proceed further in the matter. Thereafter the Munsif-Magistrate treated the protest petition filed by Bhopal Singh as complaint and proceeded with examining upon oath the complainant and some witnesses who were produced. The examination of the complainant was made on March 5, 1983 and thereafter on 5th, 7th and

22nd March, 1983, examination was made of the witnesses Nema Ram, Karan Singh, Prabhu Singh, Nathu Singh and Dr. A C. Mehta. It appears that thereafter the case was transferred to the Additional Chief Judicial Magistrate, Bali. He examined the matter and was of the opinion that there was sufficient cause for proceeding against the petitioners for offences under Sections 302, 147, 148, read with Section 149, IPC. He, therefore, ordered for the issue of warrant of arrest against the petitioners. This order was passed on March 10, 1986 which has been challenged in these two criminal miscellaneous petitions.

5. It was contended on behalf of the petitioners in both the miscellaneous petitions that the incident is alleged to have taken place on January 8, 1970, and after investigation the Police had given a final report. The final report was accepted by the Judicial Magistrate, Pali on April 2, 1971 and there was no justification for entertaining protest petition presented after more than 11 years on September 23, 1982. According to the petitioners, the protest petition had been filed to harass and disgrace them. It was also pointed out that the complainant and the witnesses examined by the Magistrate have not alleged any beatings being given by the petitioners and in the circumstances of the case, it would be wholly unjust to allow issue of process against them. It was contended that Hajari Singh deceased had died a natural death and the Police had submitted final report after thorough investigation. Taking cognizance of the offence after a lapse of 15 years of the acceptance of the final report amounts to abuse of process of court & the proceedings are liable to be quashed. It was also argued that no prima facie case has been made out against the petitioners which could have justified the Additional Chief Judicial Magistrate to issue warrant against the petitioners. During the course of arguments, it was also contended by Mr. M.C. Bhandari appearing for the petitioners in Criminal Miscellaneous Petition No. 97 of 1986 and by Mr. S.R. S nghi appearing for the petitioners in Criminal Miscellaneous Petition No. 102 of 1986 that by such delayed taking of cognizance by the Additional Chief Judicial Magistrate, Bali, and starting of such a delayed inquiry or trial on a delayed complaint violates the fundamental rights guaranteed to the petitioners under Article 21 of the Constitution. The learned Counsel for the petitioners referred to the Full Bench decision of the The State Vs. Maksudan Singh and Others, , wherein it was held that the right to speedy and public trial is a constitutional guarantee under Article 21. It was also held that the right of speedy and public trial does not arise or depend on the conviction and sentence of the accused barring exceptions where it may be invoked even after conviction, such right indeed arises normally before any conviction or sentence is recorded. It was stated that in the case of gross and inordinate delay in trial, it is open to the accused to invoke the claim that the trial should be halted in its tracks because his constitutional right stands plainly infringed. Facts in Maksudan Singh's case were that the respondents were brought to trial on the capital charge of murder, conspiracy, unlawful assembly and other offences. The occurrence took place on April 26, 19 71. After a protracted investigation and trial extending beyond 5 years, the Additional

Sessions Judge gave benefit of doubt to 8 of the accused persons and acquitted them of all the charges. It was one accused Ravindra Singh who was held guilty on the substantive charge of murder and was sentenced to rigorous imprisonment for life. Remaining 11 accused persons, who were charged for vicarious liability for murder were found guilty of causing simple hurt and rioting etc. only and sentenced to various terms of imprisonment and fine. The State of Bihar filed appeal against the acquittal of 8 accused persons. The convicted accused also filed appeal against their conviction. These appeals remained pending in the High Court for 8 years. Before the Division Bench, the counsel appearing on behalf of the appellants took up a preliminary objection that the Government appeal against acquittal qua some of the accused-respondents was not maintainable in view of Division Bench judgment in Ramdaras Ahir's case 1985 Cr.LJ 589 because of the grave delay of more than 14 years from the date of occurrence. The State challenged the correctness of the ratio in Ramdaras Ahir's case and in view of important constitutional and legal issues involved, the Division Bench referred the case to a larger Bench. His Lordship Sandhawalia C.J., speaking for the Full Bench, referred to the decision of their Lordships of the Supreme Court in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , in which Bhagwati J., had made comments with regard to delay in trial in the context of under-trials. His Lordship Bhagwati, J., (as he then was) had observed that even a delay of one year in the commencement of the trial is bad enough, how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Hussainarra Khatoon's case again came on April 19, 1979 before the Supreme Court see Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, What had been observed in Bihar was that an alarmingly large number of men and women, children were behind prison bars for years awaiting trial in the court of law. The offence with which some of them were charged were trivial which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two, and yet the under-trials were deprived of their freedom for charges ranging from 3 to 10 years, when even as much as their trial had not commenced. Ultimately it was ordered by decision reported in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, that the under-trial prisoners who were accused of multiple offences and who have already been in jail for the maximum term for which they can be sentenced on conviction, even if the sentence awarded to them were consecutive and not concurrent, should not be allowed to continue to remain in jail for a movement longer, since continuance of detention would be clearly violative, not only of human dignity but also of their fundamental right under Article 21 of the Constitution. Sandhawalia. C.J., concluded that the Constitutional right of the accused to a speedy and public trial in all criminal prosecutions now flowing under Article 21 of the Constitution by virtue of precedential mandate is indetical in complaint with the expression constitutional guarantee inserted by the 6th amendment in the American Constitution. Inordinately prolong and callous delay of 10 years was mere entirely because of the prosecution's default in the context of the reversal of a

clean acquittal on a capital charge would be per se prejudicial to the accused. Against the Full Bench of the Patna High Court in *Madheshwardhari Singh and Another Vs. State of Bihar*, , reiterated the fundamental right to speedy public trial. Again Sandhawalia CJ, stated that the sweep of the fundamental right of a speedy public trial in the context of a criminal prosecution, initiated at the State's instance, it necessarily connotes of the period from the date of the levelling of the criminal charges to the date of the rendering of the judgment in, Court. Therefore, a speedy trial in criminal prosecution includes within it both the police investigation of the crime and the later adjudication in court based thereon. Even an outer limit of 7 years for conclusion, investigation and original trial (which does not arise from the default of the accused or is otherwise not occasioned by any extra-ordinary or exceptional reason) in investigation and original trial for offences other than capital ones was held to plainly violate the constitutional guarantee of a speedy public trial under Article 21.

6. I had an occasion to deal with this matter in *Mangilal Vyas v. State of Rajasthan* 1987 Cr.LR Raj. 325 , and it was observed in *Mangilal's* case that "it is true that the court should not keep persons under-trial for their lives under indefinite suspense. Justice is not one sided. It has many facets and we have to draw a nice balance between rights and duties. When it is incumbent upon the court to see that the guilty should not escape, it is even more necessary to see that persons accused of crimes are not unnecessarily harassed. This proposition of imparting criminal justice is very well-settled since the decision of their Lordships of the Supreme Court in *Machander Vs. State of Hyderabad*,

7. Facts in *Machender's* case (supra) were that the appellant was arrested on 29th December, 1950 on the charge of murder. The police waited for six days before getting a confession recorded. The appellant was not questioned by the Sessions Judge u/s 342 Cr PC about the confession. He was convicted of murder and his conviction was confirmed by the High Court. He had been on his trial one way or another ever since his arrest for over 4 or 4-1/2 years. Except for the confession which had been excluded, the only evidence was that the deceased went to "Parenda" on 15th December, 1950 and both deceased and the accused were present in Court on that day and, therefore, appellants knew that the deceased had attended the Court. But there was no proof that the two met each other or that either knew about the movements of the other on 16th December, 1950. Four or five days after the case, the appellant came home but not the deceased. The son of the deceased asked the appellant where his father was and he was informed by the appellant that the father did not attend the Court. The son of the deceased, therefore, went to "Parenda" to make inquiries and he was informed by the pleaders that his father had attended the Court on 15th and was in Parenda till 3 p.m. on 16th. Then, son of the deceased, informed the police that his father was missing. Thus, it was not a class of case in which an accused person was last seen with a murdered maa within a few hours of the murder. Though the deceased and the appellant were both in Court at the same time, but they were not together. Their Lordships were of the opinion that the above

circumstances were not sufficient to warrant a conclusion of murder by the appellant. Their Lordships were not ready to re-open the question and to remand the case for re-trial, In that context, his Lordship Bose, J. stated that the appellant was arrested in December, 1950 and has been on his trial one way or another ever since, that is to say, for over 4/1-2 years and they were not prepared to keep persons who are on trial for their lives under indefinite suspense because trial Judges omitted to do their duty.

8. The Andhra Pradesh High Court in *G. Balchand Verma v. State of A.P.* 1986 Cr. LR 175 following *Hussainaria Khatoon's* case held that the speedy trial i.e. a reasonably expeditious trial, was an integral and essential part of the fundamental right to freedom and liberty guaranteed under Article 21 of the Constitution. In *G. Balchand Verma's* (supra) the police filed charge-sheet some time in the year 1977 and the criminal cases were pending upto 20th May, 1985. It was found that the three cases had undergone more than 100 adjournments. Not a single witness was produced or examined for more than six years by the prosecution. Despite the fact that more than 2/3rd of the witnesses listed by the prosecution were under the control of the school management. Six years had elapsed when the prosecution examined not a single witness and it was held to be an abuse of the process of law. The High Court, therefore, quashed the entire proceedings in three criminal cases.

9. In *R.P. Kapur Vs. The State of Punjab*, Gajendra-gadkar, J. dealing with the nature and scope of the inherent powers of the High Court u/s 561-A of Old Criminal Procedure Code, observed that it is well established that the inherent jurisdiction of the High Court can be exercised to quash the proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However some categories of cases may be indicated where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceedings in question are in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding on the ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely looking at the complaint or the First

Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused persons. There can be third category of cases where allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear where there is evidence which is manifestly and clearly inconsistent with the accusation made and because where there is legal evidence which in its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 561-A, the High Court would not embark upon an inquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate and ordinarily it would not. That is the function of the trial Magistrate and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. It was pointed out that broadly stated that was the nature and scope of the inherent jurisdiction of the High Court u/s 561-A in the matter of quashing Criminal proceedings. That is the effect of the judicial decision on the point. In *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, *Pramode Ranjan Sarkar* lodged a First Information Report with the Commissioner of Police, Calcutta. The Police after investigation expressed the opinion that there was no substance in the allegations which were being made by *Pramode Ranjan Sarkar* against the appellant and two others. On 17th March, 1954 *Pramode Ranjan Sarkar* filed a complaint under Sections 467, 471 and Sections 467 and 471 read with Section 109 IPC. After examining all witnesses, the Chief Presidency Magistrate dismissed the complaint on 6th August, 1954. A revision was filed by *Pramode Ranjan Sarkar* which was dismissed by the Calcutta High Court. Application for certificate under Article 134(1)(c) of the Constitution was dismissed by the Supreme Court and also the Special Leave Petition, which was granted on February 13, 1956, was withdrawn and, therefore, dismissed on March 2, 1959. Respondent *Saroj Ranjan Sarkar* then brought a complaint under the same Sections on April 3, 1959. On this second complaint the Chief Presidency Magistrate took cognizance stating that he was satisfied about the truth of the allegations and there was sufficient ground for proceeding against the appellants u/s 204 Cr. PC and he, therefore, issued process against them. Against the order, a revision was filed in the High Court. The High Court dismissed the revision. Matter came before the Supreme Court. The majority of the Judges of the Supreme Court held that the scope of inquiry u/s 202 was limited to finding out the truth or otherwise of the complaint in order to determine whether process should be issued or not. The Chief Presidency Magistrate on the first Complaint had judicially applied his mind to the material before him, and it could not be said that he had acted erroneously. Although an order of dismissal u/s 203 Cr. PC is not barred to the entertainment of the Section complaint from the same fact. But it can be entertained only in exceptional circumstances e.g. where the

previous order was passed on an incomplete record or on misunderstanding of the nature of the complaint or it was manifestly absurd or unjust. However, where a decision has been given against the complainant upon a full consideration of his case, he or any other person should not be given another opportunity to have his complaint inquired into. On merits, it was found that the order made by the previous Chief Judicial Magistrate was not in any manner manifestly absurd unjust or fallacious. Nor can it be said that the Magistrate ignored the principle which was necessary to apply under Sections 202 & 203 of the Cr.PC. The appeal in the Supreme Court arising out of the first complaint was withdrawn by Pramode Ranjan Sarkar on March 12, 1959. The second complaint was filed on April 3, 1959 i.e. after about 5 years of the dismissal of the first complaint by the Chief Judicial Magistrate, His Lordship Kapoor, J. observed that the respondent wasted but this time although he knew of the forged signatures of his late brother on various documents and after at least the lapse of 5 years, he filed fresh complaint on the same facts. In such circumstances, majority of the Judges were of the opinion that the bringing of the fresh complaint was a grave abuse of the process of the Court and was not with the object of furthering the interest of justice.

10. In Union of India (UOI) Vs. Lt.Col. G.K. Apte, the principle laid down in R.K. Kapoor's case(supra) was approved.

11. In Chajoo Ram Vs. Radhey Shyam and Another, there was question about initiation of criminal proceedings of perjury against a Sarpanch sanctioning the prosecution. One of the considerations taken into account by the Supreme Court was that there had been a long lapse of time of more than 10 years since the filing of the affidavit which was the subject matter of the charge. It was observed that delay was not wholly irrelevant for considering the question of expediency of initiating prosecution for the alleged perjury. In view of the nature of the alleged perjury, long delay was held to militate against the expediency of the prosecution, There were proceedings pending before the District Magistrate and other authorities since 1962. It was taken into account that the appellant must have suffered both mentally and financially. The Supreme Court set aside the order directing complaint filed against Chachju Ram Sarpanch the Allahabad High Court had directed the filing of the complaint by its order dated 13th March, 1968 confirming the order of the Sessions Judge, Duda, J. stated that the prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. His Lordship also considered the factor of delay as having some relevance.

12. Reference may next be made to the decision of their Lordship of the Supreme Court in State of U.P. Vs. Kapil Deo Shukla, In Kapil Deo Shukla's case(supra) the First Information Report was lodged on 9th August, 1946. The committal proceedings before the City Magistrate ended in 1949. Respondent was tried by the Sessions Judge with the aid of Jury in 1950 and was acquitted.

An appeal was filed by the State Government in the High Court of Allahabad which on 12th August 1953 set aside the order of acquittal and convicted the respondent. Kapil Deo Sukla came before the Supreme Court against conviction and his conviction was set aside by the Supreme Court on 14th October, 1957 on the ground that most of jurors did not understand English language. Retrial was started some time in 1958. Then there was controversy whether the trial should be by jury or otherwise. The proceedings dragged on upto 1966 when Kapildeo Sukla moved the High Court for quashing the proceedings on account of lapse of nearly 20 years since the trial had begun. Supreme Court observed that although Kapil Deo was facing serious charges of public nature and it was regrettable that trial should not proceed with but as against that, equally there was the fact that on account of long lapse of time, and impossibility of the accused being supplied with the copies of the police statements and other relevant documents, the trial was likely to be not fair and just. Their Lordships of the Supreme Court neither considered it expedient nor in the larger interest of justice to interfere with the High Court's order quashing the proceedings.

13. Reference may next be made to the decision in *State of Karnataka v. L. Muniswamy and Ors.* AIR 1977 SC 1989. In that case the incident took place on December 6, 1973. The allegation was that accused Nos. 1 & 8 to 20 conspired to commit the murder of the complainant and in pursuance of that conspiracy they hired accused No. 2 a notorious criminal to execute the object of the conspiracy. Accused No. 2 in turn engaged the services of accused No. 2 to 7 and eventually on December 6, 1973 accused Nos. 1 to 6 were alleged to have assaulted the complainant with knives thereby committing offence under Sections 324, 326 & 307 read with Section 34 IPC. Accused No. 2 was charged separately u/s 307 IPC or in the alternative u/s 326 IPC. The Metropolitan Magistrate directed on 23rd October, 1974 that all the 20 accused should face trial before the Sessions Court. The Sessions Judge discharged accused Nos. 11, 12 & 16 For the remaining accused he observed that there was some material to hold they have had something to do with the incident. He adjourned the case for framing charge on September 1, 1975. Two revision petitions were filed against that order before the High Court. The High Court allowed the revision petition holding that there was no sufficient ground for proceeding against accused Nos. 10, 13, 14 15 & 17 to 20 The State of Karnataka came to the Supreme Court by Special Leave and complained that the High Court should not exercise its power to quash the proceedings against the respondent without giving to the Sessions Court an opportunity to consider whether there was sufficient material on the record or not to frame charges against the respondent It was held that for the purpose of determining whether there was sufficient ground for proceeding against an accused, the Court possessed a comparatively wider discretion and in the exercise of it, it can determine the question whether the material on record, if unrebutted is such on the basis of which a conviction can be said reasonably to be possible. The Supreme Court agreed with the High Court that the material on which the prosecution proposes to rely against the respondent was wholly

inadequate to sustain the charge in respect of the accused persons and the proceedings had been rightly quashed by the High Court. It was observed by Chandra Chud, J, that in the exercise of the wholesome power contained in Section 561A of the Old Criminal Procedure Code, the High Court is entitled to quash proceeding if it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice required that the proceedings are to be quashed. His Lordships observed:

The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than ends of mere law though justice has got to be administered according to the laws made by the legislature. The compelling necessity for making these observations is that when a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

14. In the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, the incident took place on May 17, 1965 and a girl called Meeta Mukherjee died when logs of wood were being unloaded from the lorry by two coolies. Respondents No. 2 and 3 were prosecuted before the Magistrate u/s 304A read with Section 109 IPC Respondent No. 1 filed an application in the Calcutta High Court for quashing the proceedings on the ground that it constituted an abuse of the process of the court. That application was rejected on 12th December, 1968. No progress at all was made in criminal case until March, 1970. Respondents No. 1 & 2 again moved the Calcutta High Court for quashing the proceedings and this time the High Court allowed the application on the ground that no prima facie case was at all made out and the continuance of the proceedings was therefore, an abuse of the process of the Court. The matter came before the Supreme Court. His Lordship Bhagwati, J. (as he then was) held that the High Court ad inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked to make such orders as it deems fit to prevent of the abuse of the process of the court or to secure the ends of justice. It was held that despite the rejection of the earlier application, it was clear that, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the case rested where it was for a period of 1-1/2 years. Consequently, it was held that the High Court was justified to quash the proceedings against respondents No. 1 & 2.

15. In S. Guin and Others Vs. Grindlays Bank Ltd., a complaint was filed before

the Chief Judicial Magistrate Calcutta by one Mahendra Narain Chaudhary against 12 appellants for offence u/s 341 IPC and Section 36(a)(g) of the Bank Regulation Act. The offence was alleged to have been committed on October 31, 1977. After trial the Magistrate acquitted all the appellants on June 27, 1978. Grindleys Bank Ltd. filed an appeal before the High Court which came to be disposed of after nearly 6 years on December 19, 1984. The High Court felt that the trial Court had missed the essence of the offence. It set aside the judgment of acquittal and remanded the case for re-trial. The appellant came before the Supreme Court. Reliance upon the decision in *S. Veerabadrhan Chettiar Vs. E.V. Ramaswami Naicker and Others*, and it was held that having regard to the inordinate delay of nearly six years that had ensued after the judgment of acquittal, the nature and magnitude of the offence alleged to have been committed by the appellants and the difficulties that may have to be encountered in securing the presence of the witnesses in a case of this nature nearly 7 years after the incident, the quashing order was justified. In *Rakesh Saxena Vs. State*, their Lordships carefully considered the various aspects of the case and were of the view that, having regard to the nature of the dispute and the fact that the offences, if any were alleged to have been committed more than six years ago and that appellant was merely a trader at the lowest "rung" of the hierarchy in the Foreign Exchange Division of the Bank and not a highly placed officer and the trial was bound to occupy the time of the court of the first instance for not less than two or three years in view of the complicated nature of the case and even then it was extremely doubtful whether it will at all result in conviction, held that no useful purpose will be served by allowing the prosecution to continue. They quashed the charges against the appellant.

16. In a Full Bench decision of this Court in *Noor Taki alias Mammu Vs. State of Rajasthan*, in a different context, where an approver was detained in custody till the termination of the trial, it was held that in exceptional and reasonable cases, the High Court has power u/s 482 to enlarge him on bail or in case there are circumstances to suggest that his detention had been so much prolonged which would otherwise outlive the period of sentence, if convicted, his detention can be declared to be illegal as violative of Article 21 of the Constitution. His Lordship Dave, J., speaking for the Bench, observed on the basis of the decision of their Lordships of the Supreme Court in *Hussainarra Khatun's case* (supra) that reasonably expeditious trial is warranted by the provisions of the Criminal Procedure Code. It is well settled since the decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, that our procedure should be reasonable, just & fair and if it is not so, it will amount to violation of Article 21 of the Constitution.

17. In Criminal Miscellaneous Application No. 161 of 1982 *Mangilal Vyas v. State of Rajasthan* decided by Justice M.B. Sharma, where not a single witness of the prosecution was examined and the case was not taken up day to day and the Chief Judicial Magistrate dealt with the case in a very casual manner and further there had been no progress even after order of the Supreme Court, it was held

that it would be abuse of the process of the court if the proceedings in the case was allowed to continue. He therefore, quashed the proceedings in criminal case No. 8 of 1979 pending in the court of Chief Judicial Magistrate, Jhunjhunu. Without further multiplying the decisions reference may be made to the decision of the Punjab and Haryana High Court in Prithvi Raj and Anr. v. State of Haryana 1981 Cr.LJ 984, where FIR was lodged against the accused in the year 1969 and challan was presented in 1979 and charge was framed in 1980 u/s 430 read with Section 114 and 110, IPC; the proceedings were quashed on the ground that to continue the proceedings after a long lapse of about 11 years from the date of the alleged commission of the offence would amount to permitting a court proceeding to degenerate into a weapon of harassment and would not achieve the known solitary public purpose. To the same effect are the decisions of the Orissa High Court in P. Chiranjivi v. Principal M.K.C.G. Medical College (47) 1979 CLT 126 and Harekrishna Mahtab v. Republic of India 1981 (52) Cuttak Law Times 473.

18. In the instant case, as already stated, the First Information Report was lodged by Bhopal Singh on January 8, 1970, i.e., more than 17-1/2 years back. The police gave a Final Report in December 1970 to the Munsif Magistrate, Bali who after perusing it, filed it on April 2, 1971. There is on the record of the file of the trial court in Criminal Case No. 45 of 1986, a letter dated April 20, 1970 addressed by the SHO, Police Station, Bali to Bhopal Singh complainant informing him that the police is submitting a Final Report about the incident. It appears from the endorsement on the back of this letter the Bhopal Singh refused to sign the receipt of the letter which was sent by the S.H.O., Bali. In his protest petition, Bhopal Singh stated that the Police Station, Bali had not given him information of the Final Report and he came to know of the Final Report when the same was called for in another Criminal Case No. 59 of 1971 and when Dr. A.C. Mehta was examined in defence in the face of the endorsement on the back of letter dated 20th April, 1970 sent by the S.H.O. to Bhopal Singh that he refused to acknowledge the receipt of the letter and further in the absence of mention of any date in the protest petition by Bhopal Singh on which he came to know of the Final Report, it cannot be held that he lodged the protest petition, which was treated as a complaint, within a reasonable time. It is a most extraordinary and an unusual case that where the complainant Bhopal Singh lodged a First Information Report regarding murder of Hajari Singh on January 8, 1970, but he remained silent for more than 11 years and did not care to make any inquiry as to what had happened to the report lodged by him at the Police Station. There was nothing to prevent Bhopal Singh from filing himself a private complaint after waiting for a reasonable time to see if the Police files a challan. It is true that delay in filing complaint is not a ground by itself in dismissing the complaint as held in Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, The prosecution case in that case was that the accused person and some other unknown person had entered into a conspiracy in October 1959 and in pursuance of that conspiracy they had smuggled several items and foreign

goods in the years 1959-1960. In that connection, an inquiry was held by the Custom Authorities. After the close of the inquiry the goods were ordered to be confiscated and penalty was imposed. Thereafter on February 19, 1965, the Assistant Collector of Customs, after obtaining the required sanction of the Government, filed a complaint against five persons. In that case, it was contended that prosecution must be quashed because of the delay in instituting the complaint. The High Court had come to the conclusion that the delay in filing the complaint was satisfactorily explained and apart from that there was no period of limitation prescribed for filing the complaint. In this background, it was observed by Hegde, J., speaking for the Court, that the Court before which the complaint was filed could not have drawn out the same on the sole ground that there has been delay in filing it. The question of delay in filing the complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. In that case, there was delay of five years and in between an inquiry was held by the Custom Authorities and after inquiry some of the smuggled goods were confiscated and penalty was imposed. Here it is a case where the delay has neither been satisfactorily explained nor it is a delay of five years. In the instant case, the delay is of over 11 years, without any reasonable explanation. The law after 1970, has gained wider dimensions and the principle is well settled that our procedure should be fair, reasonable and just. It should not permit a court proceeding to degenerate into a weapon of harassment without achieving any solitary public purpose. The High Court in exercising of its inherent powers u/s 482, Cr.PC can make such order as it deems fit to prevent of abuse of the process of the court and to secure the ends of justice having regard to the situation prevailing at the particular point of time when its inherent power is sought to be invoked.

19. It is also pertinent to note that in the First Information Report, it was alleged by Bhopal Singh that there were 15 persons armed with swords and Lathies who came with the intention to murder him and his brother Prabhu Singh. They did not inflict any injury on them. It was stated that Hajari Singh intervened to pacify them and that only 5 persons named therein who beat Hajari Singh by fists and slaps. These five persons named in the FIR were Hari Singh alias Haria, Motia, Sohana, Taga and Leharpuri. No specific act was attributed to rest of the ten persons named in the FIR. No Lathi or sword was used. The post mortem report revealed 4 abrasions and none of them were the cause of death of Hajari Singh and they were also not sufficient in the ordinary course of nature to cause death. There was only one injury i.e. swelling on the left lower chest which is stated to have caused fracture of 10th rib on the left side. The inquiry court examined six witnesses u/s 200 Cr.PC. Discrepancy exists between the First Information Report and the examination of the complainant and his witnesses. In the first information report, names of Raghunath Singh, Jawahar Singh and Bakhtawar Singh were not mentioned as the persons who beat Hajari Singh with slaps and fists while Bhopal Singh has named them in his examination. Neema

Ram has not named Motia and Taga. Karan Singh does not name Leharpuri and has named Raghunath Singh and Kapura as the persons who gave fists and slaps to Hajari. Prabhu Singh PW 4 has named Raghunath Singh, Bakhtawar Singh and Jawahar Singh as the persons who gave fists and slaps to Hajari Singh. It would thus appear that none of the witnesses examined u/s 200 Cr. PC are consistent in between themselves and also with the FIR with regard to persons who actually gave fist-blows and slaps to Hajarising. In such circumstances, it would be nothing but permitting the court proceeding to degenerate into a weapon of harassment to the petitioner, if prosecution is allowed to be continued on a complaint which has been filed more than 11 years of the lodging of the First Information Report and of the incident and on the basis of which process has been ordered to be issued after 16 years.

20. In view of the above extra-ordinary and peculiar facts and circumstances obtaining in the instant case, further continuance of proceedings after more than 17/1-2 years of the incident against the petitioners by the Additional Chief Judicial Magistrate, Bali would constitute grave abuse of the process of the court. It is imperative for securing the ends of justice that criminal proceedings launched by Bhopal Singh by filing a protest petition, which was treated as a complaint, should no longer be allowed to stand and must be quashed.

21. I, therefore, accept the Criminal Miscellaneous petition No. 97 of 1986 and 102 of 1986 and quash the entire proceedings initiated against the petitioners on the protest petition filed by Bhopal Singh on September 23, 1982 and all subsequent proceedings thereunder taken by the Munsif-Magistrate Bali as well as the Additional Chief Judicial Magistrate, Bali and further quash the order of the Additional Chief Judicial Magistrate Bali dated March 10, 1986.

22. Since the proceedings have been quashed by allowing Criminal Miscellaneous petition No. 97 and 102 of 1986, Criminal Miscellaneous Bail Application No. 38 of 1987 filed by Sohan Singh and five others becomes infructuous.