
(2015) 03 AHC CK 0028

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 7418 of 2015

Nirmal Kumar Jain

APPELLANT

Vs

Chief Judicial Magistrate, Lalitpur and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 258, 309, 311, 482, 483
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 2 ACR 1903 : (2015) 4 ALJ 518

Hon'ble Judges : Arvind Kumar Mishra, J.; Amreshwar Pratap Sahi, J.

Bench : Division Bench

Advocate : K.K. Dubey, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner.

2. The matter relates to an offence under Section 138 of N.I. Act. A mandamus under Article 226 of the Constitution has been prayed for to direct the trial court to proceed with the matter expeditiously. In our opinion, inherent powers of the High Court in such matters are to be exercised under Section 482 Cr.P.C. and not necessarily and always through the writ jurisdiction. The provisions of Section 482 Cr.P.C. do not only define the inherent powers of the Court but it is also a power which saves the powers with the High Court in all such matters arising under the Code which the High Court possessed even before the enactment of the Code.

3. The powers of the High Court under 482 and 483 Cr.P.C. as defined are extracted herein under:-

482. Saving of Inherent power of High Court-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to

prevent abuse of the process of any court or otherwise to secure the ends of justice.

483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.- Every High Court shall so exercise its superintendence over the Courts of judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

4. The said powers coupled with the powers under Article 226 and 227 of the Constitution of India have been considered in detail in two judgments of the Delhi High Court exhaustively and such judgments are worth referring to. The first is in the case of Shri Subhkaran Loharuka and another versus State (Govt. of NCT of Delhi) and another being Criminal Miscellaneous Case No. 6122-23/2005 along with the connected matters decided by learned Single Judge on 9th July, 2010. The said judgment traces the powers of the High Court under Section 482 Cr.P.C.

5. Another judgment of the Delhi High Court in the case of Tej Kishan Sadhu Versus State and another being Criminal Miscellaneous Case No. 292 of 2013 decided on 2.5.2013 has also dealt with the scope and powers under Section 482 of the Code of Criminal Procedure and has arrived at the conclusion that the High Court does possess exhaustive powers under Section 482 Cr.P.C. that are inherent and are saved with the High Court as indicated above.

6. The Apex Court while dealing with the issue in the case of P. Ramachandra Rao Vs. State of Karnataka, . Para-21 observed as under:-

21. Is it at all necessary to have limitation bars terminating trials and proceedings? Is there no effective mechanism available for achieving the same end? The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression, x x x x x x. In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 Cr.P.C. for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in A.R. Antulay case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts

can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted. 7. The Court however finally held as follows in para-29:-

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) and (II) the Court could not have prescribed period 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 under Section 482 Cr.P.C. 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 Government shall act.

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

9. If the High Court can invoke its inherent authority under Section 482/483 Cr.P.C. for the reliefs prayed for, then such matters should be ordinarily entertained before a learned Single Judge instead of a writ petition before a division even though in view of the pronouncement above a petition under Article 226/227 may not be barred. We would however, exercise self restraint and allow the petitioner to seek his remedy before the learned Single Judge under Section 482 Cr.P.C. as observed in para-21 of P. Ramchandra Rao's judgment (supra).

10. The writ petition is dismissed with the said observations and liberty to approach the appropriate forum.