

**(1997) 04 CAL CK 0010**  
**In the Calcutta High Court**

**Case No :** Criminal Revn. No's. 1102 and 1080 of 1996

Prakriti Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision :** 01-04-1997

**Acts Referred:**

Constitution of India, 1950 — Article 21, 226  
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 167(5), 167(6), 57  
Income Tax Act, 1961 — Section 144A, 276  
Penal Code, 1860 (IPC) — Section 120B, 165(A), 420, 467, 468  
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

**Citation :** (1998) CriLJ 4396

**Hon'ble Judges :** Asish Baran Mukherjee, J

**Bench :** Single Bench

**Advocate :** Promodranjan Roy, Milon Mukherjee, S. Bhattacharjee, Abhra Mukherjee and Saibal Mondal, for the Appellant; Chaitanya Mukherjee, for the Respondent

**Final Decision :** Dismissed

## Judgement

Asish Baran Mukherjee, J.—Two revisional applications being Criminal Revision No. 1102 of 1996 & Criminal Revision No. 1080 of 1996 were heard together and shall be governed by a single Judgment. The petitioner in both the revisional applications are the same, so also the respondents.

2. On 11th April, 1991 certain officials of the Central Bureau of Investigation, hereinafter referred to as C.B.I. conducted a search in the residence, as well as some other places including Bank lockers belonging to the petitioner and thereafter two R.C. cases being 24 of 1991 and 5 of 1991 were started against the petitioner.

3. The allegations contained in the F.I.R. in respect of R.C. Case No. 24 of 1991 in short is that in course of search and investigation of different dates, Indira Vikash Patra to the extent of Rs. 6,37,000/- purchased during the period from

May 1988 to November 1988 were seized from the possession of the petitioner being the Deputy Commissioner of Income Tax, Range-VI, West Bengal, Calcutta. In addition Fixed Deposit Receipts to the extent of Rs. 1,60,000/-were also found in the possession of the petitioner apart from some other securities amounting to Rs. 2000/-. In course of interrogations, the petitioner could not give any satisfactory explanation as to the acquisition of these amounts and it was believed that these assets were disproportionate to the known sources of income of the petitioner. It is also alleged that the petitioner has in his possession other assets in the shape of movable and immovable property in his own name and also in the name of others. Accordingly, an F.I.R. was made by D.N.Biswas, Inspector of Police, C.B.I. on 12-4-1991 for alleged offence u/s 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act. It ended in a charge dated 6-3-1996 and is currently pending, in the Court of the Judge, First Special Court, Alipore, 24-Parganas.

4. The allegation contained in the R.C.Case No. 5 of 1991 as appears from the F.I.R. dated 28th January, 1991 is that the petitioner while functioning as Deputy Commissioner of Income Tax, Range-VI, West Bengal during 1988 to April 1990 entered into a criminal conspiracy with one Mr. V.P. Goel and others in order to cause wrongful pecuniary loss to Income Tax Department and corresponding wrongful gain to themselves and in pursuance to the conspiracy, said V.P. Goel furnished false and forged documents along with his Income Tax returns for the year 1988-89 mentioning that he had received an amount of Rs. 1,60,000/- from nine different persons as gift when as a matter of fact some of the alleged donors are non-existent. The petitioner accepted the said fabricated return ignoring the written report submitted by the Income Tax Officer concerned causing pecuniary loss to the extent of Rs. 60,000/- of the Income Tax Department. As such the F.I.R. was lodged for alleged offences under Sections 120B/420/467/468/471, I.P.C. and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

5. The contention of the petitioner as disclosed in the revisional application is that he joined the Indian Revenue Service in 1974 being a direct recruit as Class-I Officer. He was posted at different places including Deputy Commissioner of Income Tax, Range-VI, in November 1987. He has got an unblemished service records but on 11th April, 1991 certain officials of the C.B.I. visited the residence of the petitioner and seized L.I.C. Policies, Peerless Policies, Fixed Deposit Receipt for Rs. 1,60,000/-. The petitioner voluntarily offered the officials the keys of his locker at New Alipore Branch of Indian Oversea Bank, which contained Indira Vikash Patra wo (SIC) of Rs. 6.30 Lac.

6. The petitioner along with his brothers sisters and mother owned vast an (SIC) agricultural lands in the District of Mi (SIC) They entered into two agreements for sale of a part of the said agricultural land measuring more than four bighas at the Main Road in Midnapore. The petitioner's mother, brothers, sisters duly received an advance of Rs. 2.60 Lac from the respective purchasers which were

invested in Indira Vikash Patra on behalf of the entire family. The petitioner has only 1/8th share in the same deposits. The rest belongs to his three brothers, three sisters and mother. The Fixed Deposit of Rs. 1.60 Lac is the accumulation of the savings of the petitioner. The petitioner was not supplied with a copy of the F.I.R. even after written request for which he had to move a writ application under Article 226 of the Constitution and obtained a direction from this Court to supply a copy of the F.I.R. to the petitioner. The petitioner in course of the lengthy revisional application has given a graphic account of the assets belonging to his next of kin as also the particulars of the advances received from the prospective buyers of the ancestral property.

7. The petitioner was interrogated on 11-4-1991 and thereafter he appeared before the I.O. for seven successive days. He also supplied explanation regarding the source of acquisition of different securities to the I.O. on different dates. It is alleged that there was no move on the part of the I.O. to obtain an extension so far as investigation of the case was concerned and investigation continued even beyond the period prescribed u/s 167(5) Cr.P.C. as amended in its application to West Bengal and as such the Investigation is liable to be quashed. Accordingly, the petitioner prayed for quashing the R.C. Case. No. 24 of 1991.

8. Regarding R.C. Case No. 5 of 1991, the petitioner's case is that a reference was made to him while he was posted as Deputy Commissioner of Income Tax u/s 144A of the Income Tax Act in the case of V.P. Goel for the assessment year 1988-89. Pursuant to the notice issued by the petitioner the said assessee produced all the nine donors and identified by the Advocate Shri S.D. Gupta on 28th February, 1990. Affidavits were filed on their behalf in support of the alleged gift. Such donors were also assessed to Income Tax. After being satisfied the petitioner directed the I.T.O. concerned on 28th March to accept the gifts as genuine. The assessee, namely, Shri Goel also claimed to have received a loan from M/s. Linkon Industries Ltd., On verification it was found to be a bogus one. It was the finding of the petitioner that action should be taken against the Assessee u/s 276(c)(1) of the Income Tax Act and he accordingly suggested a prosecution. The assessee however, went up in appeal to the C.I.T. (Appeals) which in course of the order passed in Appeal No. 12/C.I.T.(A)-III/. 6(3). Calcutta, 1991 set aside the order of the petitioner striking down the addition of 7.25 Lacs. The petitioner however suggested the Second Appeal to the Tribunal against the said decision. Accordingly, it is contended by the petitioner that there could not be any reason for., drawing an inference about any conspiracy between said Goel and the petitioner.

9. His further case is that the co-accused, namely, V.P. Goel appeared before the Ld. Additional Chief Judicial Magistrate, Sealdah on 8-1-1992 for the purpose of release of certain seized documents belonging to him and succeeded in getting back those documents. Apart from that the petitioner also appeared before the Investigating Officer on several occasions. He also submitted a written submission as per direction of Tapan Chakraborty, the I.O. of the said case. It is

alleged that there being no prayer before the Additional Chief Judicial Magistrate for extension of the time for investigation, the investigation is bad being in violation of the provisions of Section 167(5) Cr.P.C. as amended in its applications to West Bengal, accordingly he has prayed for quashing of the said R.C. Case as well.

10. It has been argued on behalf of the petitioner that in case of both the investigations there was no prayer on behalf of the I.O. for any extension of time of investigation in terms of Section 167(5) Cr.P.C. which came into effect on and from 2nd May 1989 and as such in accordance with the mandatory provision of the said Section investigation is liable to be quashed. For this purpose, the Ld. Advocate has relied on a number of decisions. It was also argued for the petitioner that the officer who lodged the F.I.R. in both the R.C. Cases were also conducting investigation which practice has been deprecated by the Supreme Court and in support of this contention he relied on the decision in case of, Bhagwan Singh Vs. The State of Rajasthan, . It is true that in the present cases the person making the F.I.R. also conducted investigation which fact is not disputed by the Ld. Advocate appearing for the respondent but the fact contained in the decision quoted above is not attracted to the present cases. In the decision reported above there was an allegation of attempt to bribe a Police Official who himself lodged a complaint for alleged offence u/s 165(A), I.P.C. and also took upon himself the investigation of the case. Therefore, it is an extreme case in which the complainant himself was vitally interested in the matter of investigation and consequent conviction of the person concerned. The present case is not of that type and has got no similarity with the reported decision and as such the mere fact that the person lodging the F.I.R. also conducted investigation does not in my opinion make the investigation bad.

11. The Ld. Advocate for the petitioner also relied on the decision of, State of Tamil Nadu Vs. V. Krishnaswami Naidu and Another, in support of his contention that for the purpose of Section 167, Cr. P.C. the Special Judge, shall be deemed to be a Magistrate having jurisdiction to authorise the detention of accused. This in my opinion has got little bearing in the present case.

12. Reliance was also placed on a decision being Dr. Bipin Shantilal Panchal Vs. State of Gujarat, which has got no manner of application in the present case. In that case there was a failure on the part of prosecution to file charge sheet within the prescribed time u/s 167(2) Criminal Procedure Code, in a case under Narcotic Drugs and Psychotropic Substances Act. The prayer for bail of the accused was refused though charge sheet was not submitted within the statutory period holding that it does not create an indefeasible right on the accused to be exercised at any time. Reliance was also placed on a decision, Shakti Singh v. State reported in 1994 Calcutta Criminal Law Reporter, 137. This in my opinion has also got little bearing in the present case since the principle laid down in the said decision in that the amended Section 167(5) Criminal Procedure Code shall have application to all investigations which began prior to 2nd May, 1989 but in

which investigation could not be concluded before the said date. It was further held that so far as investigations which were completed before the amended Act came into force, its benefit cannot be reaped by the person concerned. It was however held that in cases where Section 167(5) Cr.P.C. is attracted, if there be any trial on the basis of charge sheet submitted beyond the period fixed under 167 (5) Criminal Procedure Code without any order from the Magistrate under Sub-section (5) or from the Sessions Judge under Sub-section (6) the said trial is bad and void. It has further been held that an accused acquires the right to be discharged from the case once investigation is not concluded within the period fixed in Section 167(5) Cr.P.C. Therefore, this decision though does not squarely fit with the present cases still has got some bearing in as much as it gives the emphasis on the course of investigation and the effect of non-compliance of Section 167(5) Criminal Procedure Code.

13. Reliance has also been placed on the decision namely, Durgesh Chandra Saha Vs. Bimal Chandra Saha and others, The fact in the said case does not fit with the present cases since in the said case a complaint was lodged on 15th of March 1984 and the investigation was completed on 8th of February, 1988. The benefit on Section 167(5) Cr.P.C. was not given to the accused for the obvious reason that the said amendment came into force on and from 2nd May, 1989. It has been held in the said decision "the language of Section 167(5) Cr.P.C. as amended by the West Bengal Act is quite clear in indicating that the said Section is applicable only in a case where investigation was still pending but not in a case where investigation had been completed and the charge sheet had been filed." It has also been observed "we may indicate here that if Criminal Case is kept pending for a very long time without any just cause thereby seriously affecting the guarantee under Article 21 against deprivation of personal liberty, the law is well settled that the Court in an appropriate case may quash the criminal proceeding as indicated in the Constitution Bench decision of this Court in A.R. Antulay's case."

14. In the present case the investigation began on 11th of April 1991 when search and seizure was first effected. In R.C. Case No. 24 of 1991, as per the nature of the offence the investigation ought to be completed within two years from the date on which the accused was arrested or made his appearance. In R.C. Case No. 5 of 1991, however the investigation is to be concluded within three years from the date of the arrest of the accused or the date when an accused made his appearance, since some of the alleged offences are exclusively triable by Court of Session. In the present case the petitioner was not arrested in R.C. Case No. 24 of 1991 and neither the petitioner nor the co-accused was arrested in R.C. Case No. 5 of 1991. Therefore, it will have to be considered whether the petitioner in the present case or either the petitioner or the co-accused in the second case made their appearance and if so, what is the date of such appearance since time is to be calculated from the said date.

15. So far as the, R.C. Case No. 24 of 1991, it is the case of the petitioner that

he is being interrogated by the I.O. right from the date of search, namely, 11th April 1991 and the charge sheet was submitted on 6-3-1996. It was contended by the Ld. Advocate for the petitioner that 11th April 1991 should be taken to be the date when the petitioner made his appearance in the said case as an accused. For this purpose reliance has been placed in the decision of, A. Bhaskaran v. State of West Bengal reported in 1996 CCLR 184, on the strength of the said decision it has been argued that the appearance of the accused before the I.O. should be taken to be the date when he made his appearance within the meaning of Section 167(5) Cr.P.C. Emphasis was given on the following observations:- "but if in those cases the accused is available to the investigating machinery, investigation can proceed in proper manner." But the subsequent observation in the said decision is to the following effect "this purpose is served if the accused has made his appearance in the concerned Court." In the said case one of the accused actually made his appearance before the Ld. Chief Metropolitan Magistrate, Calcutta by filing Vakalatnama for the purpose of getting back certain articles and documents seized from his custody when the Ld. Magistrate called for a report from the Investigating Officer and after considering the said report and following a hearing of both the sides allowed the prayer for return of the documents. It was held by this Court that in this circumstances, the said date of appearance of the co-accused shall be taken to be the date when the co-accused made his appearance in Court. Obviously, the benefit is to be reaped by other co-accused even if he or they make appearance at subsequent stage or not at all. Therefore, the question is whether interrogation by the I.O. by itself is tantamount to appearance in Court as mentioned in Section 167(5) Criminal Procedure Code. No authority could be cited before me in support of such a proposition and in my opinion the above decision does not come to the help of the petitioner so far as R.C. Case No. 24 of 1991 is concerned, since in that case the petitioner being the sole accused was neither arrested nor made his appearance at any point of time. The word "appearance" used in amended Section Section 167(5) Cr.P.C. in my opinion does not mean appearance before the I.O. unless it is proceeded by appearance made in concerned Court, In the event of arrest by Police, accused concerned is bound to be produced before the concerned Court within the statutory period as laid down in Section 57 Cr.P.C. Thus law, in any event, requires the presence of the accused before the concerned Court in terms of Section 167(5) Cr.P.C. The said purpose is not achieved, if an accused simply appears or is interrogated by Police without there being any prior appearance in Court concerned.

16. The case is however otherwise, so far as. R.C. Case No. 5 of 1991 is concerned. It appears from the Lower Court record that the co-accused, namely, V.P. Goel made his appearance by filing Vakalatnama on 8th of January 1992 along with a prayer for returning some seized documents when a report was called for from the I.O. Following a hearing of both the sides certain documents were returned to Goel on 28-7-1992. Obviously, 8th of January 1992 shall all purpose be taken to be the date when the co-accused of the petitioner made his

appearance in Court. In accordance with the provisions of Section 167(5) Criminal Procedure Code, the investigation ought to be completed within three years from the said date. It has not been done and there was also no prayer from the side of the investigating agency for extension of the period in accordance with Sub-section 5. Notwithstanding, the petition of the I.O. dated 24th March, 1992 which is to the effect that the investigation of the case is already complete, no report in final form has been submitted as yet. Therefore, there being no prayer for extension of time to complete investigation and order allowing such prayer in R.C. Case No. 5 of 1991, such investigation cannot be allowed to continue being in violation of Section 167(5) of Criminal Procedure Code.

17. Accordingly, the revisional application being 1102 of 1996 stands dismissed on contest and the revisional applications being 1080 of 1996 stands allowed. The R.C. Case No. 5 of 1991 (G.R. Case No. 650 of 1991) pending before the Additional Chief Judicial Magistrate, Sealdah stands quashed.