

(1990) 03 CAL CK 0032
In the Calcutta High Court
Case No : Appeal No. 652 of 1988

Smt. Archana Guha

APPELLANT

Vs

Ranjit alias Runu Guha Neogi and Others

RESPONDENT

Date of Decision : 05-03-1990

Acts Referred:

Advocates Act, 1961 — Section 24, 49
Constitution of India, 1950 — Article 136, 14, 166(3), 19, 19(1)
Contempt of Courts Act, 1971 — Section 15(2), 2
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 167(5), 202, 204
Customs Act, 1962 — Section 111, 135
Gold (Control) Act, 1968 — Section 84
Government of India Act, 1935 — Section 241(2)
Penal Code, 1860 (IPC) — Section 120B, 166, 167, 167(2), 279
Repatriation of Prisoners Act, 1984 — Section 56

Citation : (1990) CriLJ 2012

Hon'ble Judges : S.K. Guin, J;M.N. Roy, J

Bench : Division Bench

Advocate : A.P. Chatterjee and Samapti Chatterjee, Gopal Chakraborty, Udayan Chakraborty and Sanjukta Bhattacharjee, for the Appellant; Dilip Kumar Dutt, Pradip Kumar Ghosh, Sekhar Bose, Milan Mukherjee and Mandira Mukherjee, (for Nos. 1 and 7) and Puluk Mondal, (for Nos. 3 to 6), for the Respondent

Final Decision : Allowed

Judgement

M.N. Roy, J.—The appellant above-named, on or about 20th August 1977, filed a petition of complaint in the Court of the learned Chief Metropolitan Magistrate, Calcutta, against respondent No. 1 and other four Police officials alleging the commission of offences under Sections 325, 331, 348 and 509 of the Indian Penal Code and the learned Magistrate after perusing the complaint took cognizance and thereafter, examined the complainant and nine other witnesses and by an order dated 17th October 1977, directed the issue of summons against respondent No. 1 under Sections 166, 333/34, 331/34, 348/34 and 509 of the Indian Penal Code and also directed the issue of summons against the

other four accused persons more or less of similar sections as indicated earlier. Thereafter, by an order dated 20th December 1978, the learned Magistrate committed the respondent No. 1 along with others to the City Civil and Sessions Court, Calcutta for trial under the sections as mentioned above.

The case of the complainant as would appear from her complaint was that she was residing at 7, Jowpur Road, Dum Dum along with her brother's wife Smt. Latika Guha, her mother and other family members and one Mrs. Gouri Chatterjee, who was like a member of the family. It was alleged that on or about 18th July 1974, at about 1-30 A.M. her house was raided by a number of Police officials disclosing that they had come from Lalbazar and according to complainant Smt. Archana Guha that the Police ransacked her entire room and carried out a search, alleging further, without asking for any independent witness. It was also alleged that thereafter, the said Smt. Guha along with Smt. Latika Guha and Smt. Gauri Chatterjee were taken to Cossipore Police Station and then in the morning of 18th July 1974, they were brought to the Special D.D. Cell at Lalbazar, where they were questioned.

It has also been alleged that about 10 A.M. on 18th July 1974, Smt. Archana Guha and two other ladies as mentioned above, were taken to the room of Shri Runu Guha Neogi respondent No. 1 abovenamed, which led to a torture chamber. It was alleged that Smt. Gouri Chatterjee was first taken inside the said chamber and little thereafter Smt. Archana Guha was taken there for the purpose of showing her the way and manner in which Smt. Chatterjee was being tortured. It was the allegation that thereafter, Smt. Archana Guha was also tortured and in fact, Shri Guha Neogi burnt the sole of the feet and elbow with lighted cigarette ends having her hung up on a pole with the head downwards. It was further been alleged that about 2-30 P.M. on that date, Smt. Archana Guha was also removed to the Central lock-up at Lalbazar. At about 4-00 P.M. she was again brought to the torture chamber and subjected to further torture by Shri Guha Neogi and the other Police officials against whom allegations were lodged.

2-3. It was also the allegation that then on 19th July 1974, at about 11-30 A.M. all the ladies were taken to Sealdah Court and they were made to sit in the chamber of one Mr. Sanyal for some time, but they were not produced before the learned Magistrate and thereafter, they were again brought back to Lalbazar and Smt. Archana Guha was threatened and abused by Shri Guha Neogi and others and thereafter, all the three ladies were again subjected to various forms of torture which continued till 20th July 1974,

4. It has been alleged that because of inhuman torture and the beating which the ladies had received at the hands of the officials charged, the lower limbs of Smt. Archana Guha grew gradually weaker and such defect was observed by her while she was confined in the Jail and was examined by the Jail Doctors who, it has been stated, treated her accordingly. It has further been alleged that after her discharge from the Criminal cases, Smt. Archana Guha was detained under the Maintenance of Internal Security Act till 3rd May 1977 and since November 1976,

she had been taken recourse to various types of treatment but the consistent medical opinion was that she could never completely recover the power Of her lower limbs and there was no likelihood of her becoming normal and active and she has alleged that she has been crippled for life due to such inhuman torture on her by Shri Guha Neogi and other Police officials as indicated above.

5. It would appear that Shri Guha Neogi moved and obtained a Rule being Criminal Revn. No. 449 of 1979, against the action which was started on the basis of the complaint as mentioned above and in that proceedings, apart from the said Shri Guha Neogi other Police officials has also intervened and in support of the Rule it was submitted that the prosecution case as sought to be made out or established through the witnesses was on the face of it false and was so patently absurd and inherently improbable that the proceeding before the learned Magistrate should have been quashed at once. Mr. A.P. Chatterjee who is now appearing for the appellant, admittedly appeared for the State in that proceeding and after hearing the learned Advocate and considering the materials before them and also the medical evidence of doctors including Dr. Bhabo Ranjan Sengupta, the learned Judges set aside the order dated 20th December 1978, committing the accused persons to City Sessions Court at Calcutta and also modified the order dated 17th October 1977, issuing process to the extent that the portion of the order relating to the issue of process under Sections 331/34 of the Indian Penal Code should be set aside.

5A. As a result of the above, the case was remanded back to the learned Magistrate with a direction to proceed with the trial in accordance with the procedure as laid down for the trial of warrant cases instituted on the basis of a complaint and Their Lordships of the said Division Bench also made it clear that the petitioner and other accused persons before them would be at liberty to argue on the point as raised before the said Bench, or such other points as may be available to them, before the learned Magistrate at the appropriate stage. It would appear that a prayer for certificate for leave to appeal to the Supreme Court was made orally and such prayer was refused.

6. The case under consideration has really a very peculiar and chequered career. Before the matter as indicated hereinbefore on 13th May 1980, a submission was made before the learned Magistrate that Shri A.P. Chatterjee, the Standing Counsel of the Government of West Bengal, had no legal authority to conduct the case on behalf of Smt. Archana Guha, the complainant, since the case was a complaint case. It was submitted that under the provisions of R. 45 of L.R. Manual, such appearance of Shri Chatterjee would be barred, as the accused persons were Government servants and whatever was done by them, it was done in due discharge of their official duties as public servants and moreover, the accused persons have applied to their superiors for having been defended by the State and on such request, the Commissioner of Police had also requested the learned L.R., to have their cases defended. It was further contended that as per Section 302 of the Criminal Procedure Code Shri Chatterjee, the learned

Standing Counsel was debarred from conducting the instant case on behalf of complainant. It would appear that on behalf of Shri Chatterjee, it was submitted that such an application was filed in this Court, praying for appropriate Writs, restraining him from appearing for and on behalf of a private party or holding the brief of Smt. Archana Guha in the concerned criminal proceedings and on such application, on or about 16th August 1978 a Rule was issued on him as well as the State of West Bengal and others to show cause why appropriate Writs as prayed for, should not be issued. It would further appear that the proceedings were thereafter heard and disposed of by Salil Kumar Dutta, J. (as His Lordship then was) and after consideration of the elaborate arguments as advanced before him, by his judgment and order dated 23rd February 1979, the learned Judge observed that "there was no illegality on the part of Shri Chatterjee in breach of his official duty as Standing Counsel of the State, in accepting the brief on behalf of Smt. Archana Guha, against the alleged commission of offence under the penal laws of the land by the accused person, which were unconnected with the discharge of the official duties." The said determination has since been reported in, (1979) 1 Cal HN 262, and after considering the respective cases as made out before him, the learned Judge has indicated that a counsel can always refuse a brief but such refusal must be for good and substantial reasons. Rules framed u/s 49 of the Advocates' Act, enjoin that a counsel is bound to accept any brief in Courts or tribunals where he professes to practise but special circumstances may justify his refusal to accept a particular brief. When the state offers a brief to its law advisers, it will be possible for him to say on appropriate occasions that he will not accept the brief which for certain reasons may even remain undisclosed. Such right of refusal of lawyers to accept briefs is no criterion or test for holding that such law advisers are not servants of the Government as it is a special feature attached to the legal profession having regard to the duties the lawyers are required to discharge and it is not necessary that to be in Government service one must have a full time employment or receive a fixed remuneration in a scale or otherwise, for such person may hold a part time employment or may receive a commission instead of a salary and presence of any of the indicia, like selection and appointment, suspension, dismissal, control of the manner and method of doing work will be sufficient to make a person a government servant. It has further been observed that the provisions of Section 24 of the Advocates Act in terms or by implication do not provide that a government servant cannot be an Advocate or a person on becoming a government servant must of necessity suspend or discontinue his practice as a lawyer in Court. The right of a Government employee to practise as an advocate in Court will depend on the terms and conditions of his employment under the Government and under Rule 23 of the Legal Remembrancer's Manual, 1971, the Advocate General, as a condition of his service, is debarred inter alia from advising or holding briefs against the State, defending accused persons in criminal prosecutions or advising private parties in cases in which he is likely to be called on to advise the Government. These, by implications, suggest that the Advocate General subject to the aforesaid limitations, is free to appear and plead as Advocate in Courts on

behalf of private parties, so that his service in the Government is not a whole-time employment. Under Rule 40 of the said Manual, the Standing Counsel and others mentioned there, shall hold office during the pleasure of the Governor. While they will receive monthly retainer, they are gazetted but not whole time Government servants, apart from indicating that there is no warrant in law for the proposition that it is not possible for a legal practitioner on the rolls of the High Court to be both a legal practitioner and a member of a permanent but part time service holder of a State as such legal advisors nor will it be a correct proposition to say that as soon as an advocate becomes a part time member of service under the Government he must have his practice suspended since everything depends on the terms and conditions of the Government employment, though there will be no such opportunity for a whole-time Government servant and that the limitations of the office of the Standing Counsel have been duly provided for under the authority of Section 241(2) of the Government of India Act, 1935. Such limitations being created under statutory powers by the competent authority are accordingly enforceable in law by issue of appropriate writs by the High Courts, apart from the provisions of Legal Remembrancers Manual, 1971 wherein the limitations have also been incorporated. It has also been observed that there is no reason why the rules compiled in the Legal Remembrancer's Manual should not be accepted as statutory rules as being deemed to be framed by the official head of the department in matters under his charge under authority of the Rules of Business framed under Article 166(3) of the Constitution. Accordingly, notwithstanding the views of the Legal Remembrancer, it may be possible to hold that the Rules of the Manual are statutory being created by competent authority under powers vested in such authority by law and the terms and conditions of service of the government servants are regulated and determined by statutory rules which are as much binding on the employees as on the Government, though the Government may unilaterally alter the same under statutory authority. The relationship of government servants with the Government is thus one of status created by statute and not of master and servant as understood in common parlance. It will therefore be proper and accurate to describe the government servants in civil services as the holders of civil posts in the Government. In addition to the observations that the Law Advisers like the Standing Counsel, even though they have the right and discretion to conduct their cases as they may deem fit free from Government control, they are still holders of public offices holding civil posts in the Government under the terms provided in the rules framed for them and not Government servant in the ordinary signification of "servants" and that there can be little doubt that a public officer as holder of a civil post as here is certainly entitled to protection against prosecution without sanction for all acts done in the discharge of his official duty. Principles established in decision clearly indicate that a public officer merely because he is a public officer will not be entitled to protection for any act which is not inextricably directly and integrally connected with the discharge of his official duty though it may be in excess of it. The learned Judge has also indicated that the allegations before him were that

Smt. Archana Guha was tortured by the accused persons and the charges against them are under the ordinary penal laws of the land, under various sections of the Penal Code, unconnected with the discharge of their official duties. It is obvious that the alleged offences could not be in the discharge of official duty and not merely in excess of it. It could not be said that the offenders were entitled to protection in respect thereof as public officers. There appears to be no impediment for the law Advisers of the State to conduct the case on behalf of any private party where these persons have been alleged to be perpetrators of such crimes. There has been no violation of the provisions of Rule 45 as it now stands, of the Legal Remembrancer's Manual, 1971 on the part of the Standing Counsel.

6A. It should be noted that when the matter was sent back after the Division Bench judgment of this Court as indicated earlier, the learned Magistrate intended to enter into and consider the proceedings as initiated and then again, further objection was taken against Mr. Chatterjee's appearance for the complainant and such allegations having failed on consideration, against the determinations as made by the learned Magistrate, this Court was moved in its Criminal Revisional jurisdiction and Criminal Revision Case No. 2454 of 1981 was obtained. The said Rule, on consideration of the earlier two judgments as referred to hereinbefore and the relevant provisions of the concerned statutes, was discharged by Monoj Kumar Mukherjee, J. and since the matter was pending for a long time. His Lordship directed the learned Magistrate to proceed with and dispose of the case as expeditiously as possible, preferably within a period of six months from the date of receipt of the records by him.

7. In the above process, there is no doubt that a long time was consumed before the matter could be taken up for consideration and thereafter, when the case was sought to be taken up, the accused persons went before the Hon''ble Supreme Court of India without impleading Smt. Archana Guha though it was a complaint case which was remanded to the learned Magistrate. Such being the position, no notice of the said proceedings before the Hon''ble Supreme Court of India was served on Smt. Archana Guha and it has been alleged that such notice was also suppressed so far the State Government was concerned. It has been stated that only on receipt of an order dated 19th November 1985, as made by the Hon''ble Supreme Court of India in Criminal Appeal No. 788 of 1985 arising out of SLP (Crl) No. 777 of 1987, Ranjit Guha Neogi v. State of West Bengal, which was received by the Court of the learned Magistrate, Smt. Archana Guha came to learn about the following order as made:--

The State of West Bengal though served has not entered appearance. We have heard Shri Kapil Sibal, learned Counsel for the petitioner. Special Leave is granted. The State of West Bengal is directed to appoint any person other than Sri Arun Prokash Chatterjee, Advocate as the Prosecutor in the Criminal Case filed against the appellant in C/ 3285 of 1977 on the file of the Metropolitan Magistrate, 5th Court, Calcutta. The appeal is accordingly allowed.

8. Mr. Chatterjee has stated that even though after receipt of such order, the learned Magistrate fixed several dates for taking up the proceedings for consideration, the same could not be effected for deaths of the accused persons and ultimately, he made an application for review before the Hon"ble Supreme Court of India, against the order as quoted earlier. It has been stated that the said application for review was filed on behalf of the said Smt. Archana Guha before the Hon"ble Supreme Court of India in or about September 1986 and in between there were certainly some dates fixed. It would further appear that by the order dated 3rd April 1987, the Hon"ble Supreme Court of India allowed the review application as filed, by passing the following order:--

We have heard learned Counsel for the parties. We are of the view that the order passed on 19th November 1985 proceeded on wrong facts. We, therefore, recall the order dated 19th November 1985. The SLP (Cri) No. 777/84 is restored to the file.

We have heard learned Counsel for the parties and also Mr. A.P. Chatterjee. We do not find that there is any ground to grant leave in this case. The SLP is dismissed and as a result thereof the concerned SLP was dismissed.

9. From the order of the learned Magistrate which was sought to be impeached in Matter No. of 1988 reported in (1988) 2 CHN 313 (Ranjit Guha Neogi alias Runu Guha Neogi v. State of West Bengal). It would appear that the time as actually consumed in completing the proceedings were as under:--

(A) Time spent in the Hon"ble High Court and also at City Court at different interlocutory stages:--

25- 8-78 to 19-12-80 2 years 4 months" total 5-11-81 to 14-1-84 2 years 2 months" 6 years" 16-4-84 to 12-2-85 1 year 8 months" 6 months 17-7-87 to 18-11-87 4 months. approx.

(B) Time taken by the complainant:

20- 8-77 to 17-10-77 2 months total 12- 7-78 to 25- 8-78 1 month 13 days 1 year 17-12-86 to 9-6-87 6 months 1 month approx 4-12-87 to 23-3-88 3 months 19 days.

(C) Time taken for appearance of the accused persons after issue of process, summons and notices:

Total 17-10-77 to 12-7-78 about 9 months 2 years 19-12-80 to 25- 8-81 about 9 months 7 months 10-12-85 to 17-12-86 about 13 months approx. 18-11-87 to 4-12-87 about 17 days and

(D) Time consumed due to absence of Court or lapses of Court's staff of adjournment granted by Court:--

Total 15- 8-1981 to 5-11-1981 about 2 months 14- 1-1984 to 16-4-1984 about 3 months 6 months 9-6-1987 to 17- 7-1987 about 1 month approx.

10. From the analysis of the above, it would also appear that the learned Magistrate has duly recorded that the complainant took time only for one year and one month, while six years and six months were spent to dispose of the accused's petitions and to receive back the records from the superior courts and it would also appear that two years seven months time were spent to procure attendance of the accused persons and that too, each time, after receipt of the records back from the Superior courts and some time was also spent for the death of the accused persons.

11. A writ petition, which was moved in Matter No. 999 of 1988, the determinations whereof, the present appeal has been preferred, the petitioner Ranjit Guha Neogi stated that he was at the relevant time posted as Assistant Commissioner-I of Calcutta Police and at that time he was attached to the Special Branch. It was his case that the complainant Smt. Archana Guha falsely implicated him in a Criminal Case, which as stated earlier, was filed on 28th August 1977, in the Court of the learned Chief Metropolitan Magistrate, Calcutta and on the basis of incidents, which were stated by the complainant, to have been occurred during the period between 17th July 1974 and 13th August 1974. Those complaints, according to the writ, petitioner, were related to incidents alleged to have been occurred after the arrest of Smt. Archana Guha on the night of 17th July 1974 along with Mrs. Latika Guha and Miss Gouri Chetterjee. The writ petitioner has stated that the complainants alleged in the petition that Smt. Archana Guha and other two ladies were subjected to torture and indignity at Lalbazar, during the periods as mentioned earlier. It was also alleged in the complaint that Smt. Guha and her companions were further taken to Cossipore Police Station and thereafter, the said Smt. Guha was produced before the learned Magistrate, Sealdah, but kept in the chamber of the Court Inspector attached to that Court and then, she was produced at the Police lockup attached to Sealdah Court and Alipore Court, but was not produced before any Magistrate either at Sealdah or Alipore.

12. The allegations as contained in the complaint, the writ petitioner respondent claimed, were utterly absurd and inherently improbable, apart from being devoid of any prima facie merit and that fact, he has stated, appeared from the intrinsic evidence as available in the petition and the particulars whereof have been disclosed in para. 5(a) to (k) of the writ petition. We are not indicating those facts or reiterating them in our judgment, since those facts have already been indicated in the judgment as impeached.

13. The writ petitioner respondent has also stated that on the basis of the said petition of complaint, the learned Chief Metropolitan Magistrate, took cognizance and examined Smt. Archana Guha and other ladies, who were arrested on the night of 17th July 1974 and besides them, seven other witnesses were examined and he has stated that those seven witnesses were not witnesses to the occurrence. The writ petitioner respondent has further stated that on the basis of the evidence of the complainant and her witnesses, the learned Magistrate issued

processes against him under sections as mentioned earlier, of the Indian Penal Code and he along with other accused persons were also summoned for various offences under the said Code. In fact, it has been stated that the said writ petitioner respondent and other accused persons appeared in Court and were released on bail and thereafter, by an order dated 28th December 1978, they were committed to the Court of Session.

14. Admittedly, against such committal order this Court was moved and Criminal Revision Case No. 449 of 1979, was obtained, which as mentioned earlier, was disposed of on 13th May 1980, by a Division Bench of this Court presided over by P.C. Barooah, J. (as His Lordship then was). Since we have indicated the terms of the said earlier order, we are not also reiterating them here. In any event, we find that even on the basis of the said order of remand, the learned Magistrate was directed to proceed with the trial in accordance with the procedure laid down for the trial of warrant cases, instituted on the basis of a complaint and it was made clear that the petitioner in that case and other accused persons will be at liberty to urge the point raised in that proceeding, or such other points as may be available to them, before the learned Magistrate at the appropriate stage. By the said Division Bench judgment, the order dated 28th December 1978, committing the writ petitioner respondent and other accused person to the City Sessions Court at Calcutta, was set aside and the order dated 17th October 1977, issuing process against them, was modified to the extent that the portion of the order relating to the issue of process under Sections 331/34 of the Indian Penal Code was set aside and, therefore, the proceedings on the basis of the other concerned provisions of the Code were to continue.

15. It was the case of the writ petitioner respondent that when the said Criminal Revision Case was heard before the concerned Division Bench, Mr. A.P. Chatterjee, Senior Standing Counsel along with Mr. Dipak Banerjee, Advocate appeared on behalf of the State, while none appeared on behalf of the complainant and it was indicated further that Mr. Chatterjee was also engaged to conduct the Sessions trial on behalf of the State, when the case was committed to Sessions. It was also the further case of the writ petitioner respondent that earlier, he objected to the appearance of Mr. Chatterjee on behalf of the private complainants, when he was a Police officer and according to him, was falsely implicated in respect of his official act and performance of his duties and as such was entitled to seek the advice of the Senior Standing Counsel, we have also indicated earlier that at this stage, this Court was moved and C.R. No. 4988(W) of 1978 Reported in (1979) 1 Cal HN 262 was obtained, which Rule was ultimately discharged by S.K. Dutta, J. (as his Lordship then was). The particulars of the said determinations, we have quoted earlier and as such we are also not reiterating them now. Admittedly, against such determinations, an appeal being F. M. A. T. No. 1029 of 1979 was preferred and even thereafter or during the pendency of that appeal, on an application being made further and in the circumstances as indicated earlier, a Civil Order, being C.O. No. 3749(W) of 1979, was issued which Civil Order was also disposed of by the said learned

Judge, according to the writ petitioner respondent, on the statements made by the Additional Advocate General, appearing on behalf of the State, that the State Government would withdraw the impugned, order of appointment of Mr. Chatterjee. On such statement, the said Civil Order proceeding was disposed of.

16. The writ petitioner respondent has then stated, that when the case was transferred to the learned Court of the 5th Metropolitan Magistrate, Calcutta, for trial, Mr. Chatterjee who at the relevant time was also the Senior Standing Counsel of the Government of West Bengal, appeared to conduct the case of the complainant, in spite of the fact that the writ petitioner respondent in the case was a Police Officer and so also the other accused persons. The writ petitioner respondent has stated that apprehending serious prejudice and after obtaining due and bona fide legal advice, an objection was filed against the appearance of the learned Senior Standing Counsel for the complainant in the concerned case, which by an order dated 12th November 1981, was rejected by the learned Metropolitan Magistrate. This order was also challenged in Criminal Revision No. 2454 of 1981, u/s 482 of the Code of Criminal Procedure, 1978, the same was discharged by Monoj Kumar Mukherjee, J. as indicated earlier. There is no doubt that against such determinations, a SLP under Article 136 of the Constitution of India as indicated earlier was made and we have earlier indicated the sequence of events and how, ultimately, the said Special Leave Petition, which was initially allowed, but was subsequently rejected and the order as made was recalled on review.

17. To establish that even thereafter, the proceeding before the learned Magistrate was delayed due to or at the instance of the complainant Smt. Archana Guha, various facts have been stated in the writ petition and further facts were sought to be brought in to establish that there was no chance of obtaining fair trial in the proceeding, by stating that on 16th July 1987, a letter was addressed to the learned Metropolitan Magistrate, Calcutta, signed by seven different individuals claiming to be the representatives of different organisations. Those signatories were claimed by the writ petitioner respondent to be altogether strangers to the concerned complaint proceeding and by the said letter, those individuals asked for speedy disposal of the concerned case. It has also been stated that during the course of hearing on or about 17th July 1987 and again on the next date of hearing on 22nd July 1987, there were demonstrations in the Court premises by a large number of outsiders and their associates for the purpose of supporting the case of the complainant and those demonstrators displayed banners and festoons displaying the names of the respective organisations including "Association for the protection of Democratic Rights" and "Nan Nirjatan Morcha" and they shouted slogans, demanding early disposal of the concerned case and punishment of the wrong doers. The writ petitioner respondent has alleged that such demonstrations or shouting of slogans, were pre arranged and perhaps with the intention to create public opinion in favour of the complainant and against the accused persons therein and also to cause prejudice to them.

18. The writ petitioner respondent has also stated that in the daily issues of "The Statesman" of 18th July 1987, the news item as indicated hereunder, was also published, with a photograph of the concerned demonstration:

"Members of the Association for the protection of democratic rights and the Nari Nirjatan Pratirodh Manch demonstrated outside Bankshall Court in Calcutta on Friday Morning, demanding a speedy trial of the case of Archana Guha who was allegedly tortured by the Police. The case was filed in 1977. The demonstration, which started at about 10 a.m. continued for an hour and a spokesman of the APDR claimed that the police were taken by surprise by the unscheduled agitation. The members of the two Associations submitted a memorandum in this connection to the Magistrate on Thursday."

19. The writ petitioner respondent has stated that by the objection dated 17th July 1987, he made an application before the learned trying Magistrate, praying for making a reference of the case to the Hon"ble High Court, Calcutta u/s 15(2) of the Contempt of Courts Act, 1971 and in the said letter it was claimed that the demonstrations in the Court premises by the assembly formed by a large number of outsiders was a case of Criminal Contempt" within the meaning of Section 2(c) of the Contempt of Court Act, 1971, as the said demonstration was intended to interfere with the concerned Criminal case and thus to obstruct or intended to obstruct the administration of justice and ultimately, was initiated for the purpose of prejudicing the case of the accused persons. The learned Magistrate by his order dated 17th July 1987, dismissed the said petition by directing as under:

Complt. is present. Accused are absent and accused Ranjit Guha Neogi prays for permission to be represented by his Ld. Lawyer u/s 317 of Cr. P.C. Heard the Ld. Lawyer of both sides. Prayer is allowed.

At this stage the petition dated 6-7-1987 filed by several organisations is taken up for consideration.

Ld. Lawyer for the accused files a petition and submits therein that the petition so filed by the said 3rd party organisation amounts to an interference in the proceeding of court and as such the matter should be referred to Hon"ble High Court u/s 15(2) of Contempt of Courts Act as the same interference is a clear case of contempt of Court, Ld. Lawyer for the complainant submits that his client is not concerned in any way as regards the petition so filed by the said 3rd party organisation and has got nothing to state, as regards the allegation of contempt of Court, so raised by the Ld. Lawyer for accused.

The complainant Smt. Archana Guja is further examined in Chief and further examination is adjourned to 22-7-1987 on the prayer of the Ld. Lawyer for the complaint and thereafter, the learned Magistrate recorded the following order:--

At this stage the petition so filed by the 3rd party organisation and the objection against same are taken up for consideration and order.

In the said petition, the 3rd party organisation have humbly prayed for the speedy disposal of the case as the case is coming up for hearing after seven years.

The Ld. lawyer for the accused in the objection has submitted, inter alia, that this system and procedure adopted by the outsiders is unknown to law and that this is a clear instance of interference in the judicial proceedings and if this is allowed to be continued or any importance is given to such a letter a very bad precedent is likely to be established, so far this particular court is concerned and as such if a speedy trial is ordered by the court at this stage there will be sufficient scope for reasonable inference that the Ld. Court might have passed such an order because of such a letter. As such, the Ld. Lawyer for accused submits that the matter may please be referred u/s 15(2) of Contempt of Courts Act to the Hon"ble High Court.

But it is to be noted, Section 327 of Cr. P.C. provides that a criminal case is always to remain open to the general member of the public and also think that the judicial decision may have repercussion on the society as a whole.

It is to be noted further in this context that the complainant of this case is respectable lady and the allegation is u/s 330 of I.P. Code and other section against a police officer alleging the voluntary causing of hurt to extort confession.

Amongst the signatories of the said petition filed by the 3rd party organisation are the members of "Nari Nirjatan Birodhi Mancha" "Pragatisil Mahila Samity" and others. Moreover in the contents of said petition, there is nothing for any presumption that the said organisation are trying to create pressure upon court for speedy disposal and they have only humbly prayed for speedy disposal and there is no endeavour on their part to Court Contempt of the proceeding of the court and as such the prayer of Ld. Lawyer for accused for referring the matter to the Hon"ble High Court u/s 15(2) of Contempt of Court Act is rejected.

20. The writ petitioner respondent Shri Guha Neogi has further asserted that the letter containing the allegations as made by the demonstrators were at the instigation and inducement of the complainant and that too, with the view as indicated earlier. It has further been claimed that the entire conduct of the complainant, considered along with the said demonstration outside the Court room as held was nothing but an action taken to create external pressure on the Court and that too with the intention to prejudice his case as mentioned earlier. Apart from the above, the respondent opposite party, the said Shri Guha Neogi has also stated that in the first week of August, a leaflet in Bengali was widely circulated in the city particularly at the different Court premises, including the Court, where the proceeding was being tried and the same was purported to have been published by one Sujit Bhadra, on behalf of "Association for protection of democratic rights" and "Nari Nirjatan Mancha" and he has also stated that in another daily newspaper "The Telegraph" in its Calcutta Edition of 26th July 1987 published an article under the heading "Paralysed by Torture" written by one

Sanjoy Basak and the said publication was accompanied by the two photographs of the complainant Smt. Archana Guha and one of which was purported to depict Smt. Guha being taken to Court in an armed chair for the hearing of her case and shortly thereafter, in a Bengali Magazine called "Pratikshan" which is published by one Priyabrata Deb and is edited by Smt. Swapna Deb an article was published written by one Subasis Maitra, relating to the story of a ten year long protest by Smt. Archana Guha and that article, the writ petitioner respondent has stated, was in the form of a narrative in the first person singular, being the version of the said Smt. Archana Guha and his brother Soumen Guha along with the comments of the writer and the same was accompanied by photographs. It has been stated that along with the said articles there was also a report of an interview of A.P. Chatterjee being the learned Counsel, appearing on behalf of Smt. Archana Guha along with his photograph.

21. The writ petitioner respondent has stated that on 22nd July 1987, he made an application before the learned Metropolitan Magistrate, referring to another publication in Ananda Bazar Patrika dated 18th July 1987 under the caption "Torture Cell" and submitted that such publication has not only ventilated about the Court proceeding but the said news item went to the extent of ventilating the entire story of the prosecution case, besides the recorded evidence, with an attractive caption as mentioned earlier and it was also stated by him that in the instant case, besides the complainant, several other witnesses would also be examined and if the evidence of the complainant and the other witnesses were allowed to be depicted or published in the newspapers, that would seriously prejudice his defence, as each and every witness would get the opportunity to reproduce what was said by the earlier witnesses and that apart, the interested witnesses of the case would get the opportunity to be fully prepared about the story to be reproduced in their evidence during the trial. It was also alleged that such verbatim reproduction of the evidence as made would seriously prejudice the defence of the writ petitioner respondent and that would ultimately interfere with the interest of justice and fair trial.

22. On such application, the learned Magistrate made the following order:--

Now, in the present case I think that if the evidence which is recorded today, or will be recorded in future are published in to to the newspapers then the witnesses who will be adduced next by the prosecution side will get an opportunity of getting well prepared much ahead as regards the trend of the examination in chief and particularly of cross-examination and as regards the question which they will have to face at the time of their appearance in the witness box and consequently that highly esteemed procedure of the Court as regards recording of evidence will be totally frustrated.

As such in conclusion I hereby order that all the newspapers are hereby debarred from publishing the evidence of witnesses which has been recorded today and which will be recorded in future.

But this order will not affect in any way the right of the newspapers to report about other matter of the case other than the principal allegation of the prosecution case and the evidence recorded on each day.

23. Against that orders of the learned Magistrate, Ajkal Publishers Private Limited moved an application under Article 227 of the Constitution of India, contending that by the same, the freedom of the Press under Article 19(1)(a) of the Constitution of India had been violated. This application was disposed of by M.R. Mullick, J. by an order and judgment dated 15th September 1987 and thereby, his Lordship was pleased to modify the order of the learned Magistrate by directing as under:--

(1) As long as the trial continues no press shall publish the exact reproduction of the evidence of the witnesses in any newspaper or magazine. This ban will continue as long as the trial is continuing and judgment is not delivered.

(2) Full report of the case during trial may also affect fair trial and the press shall desist from publishing the full report of the case which may give a hint to non-examined witnesses. This ban will also continue as long as the trial is continuing.

(3) The press may publish a brief summary of the evidence of the witness while publishing day to day court proceedings.

(4) No excessive publication tending to affect fair trial shall be made by any press and any complaint is made before the learned Magistrate that this order has been violated or that the press has reported too excessive publication the Magistrate shall initiate suitable action. The said judgment has since been reported in 1987 Cal Cri LR 263. It has also been alleged that the contents of the said judgment and order were sought to be frustrated by the concerned publication by publishing full length stories, interview, reports and other comments, espousing the cause of Smt. Archana Guha and reporting her unilateral version of the case.

24. In such view of the matter, the writ petitioner respondent Shri Guha Neogi made an application for transfer of the case before the learned Chief Judge, City Sessions Court at Calcutta, whereupon the case was transferred to the Court of the learned Metropolitan Magistrate, 7th Court, Calcutta. It was also the case of the writ petitioner . respondent Shri Guha Neogi that Article 21 of the Constitution of India guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law and one of such well established procedure of a fair trial is and should be to mean, in this case, a fair trial in accordance with the provisions of the Code of Criminal Procedure, 1973 and the Indian Evidence Act.

25. Apart from the above, the writ petitioner respondent Guha Neogi has also stated that there arc also certain time bound fundamental principles of Criminal Jurisprudence which are required to be followed in India and in any Criminal trial and one of such principles is that the accused is presumed to be innocent until he

is proved to be otherwise and according to him the second principle is that the guilt of the accused person has to be established beyond any reasonable doubt by the prosecution by adducing relevant and admissible evidence in a Court of law. Thirdly, he contended that the accused is entitled to a fair trial in a Court of law, free from any prejudice, bias or pre-conceived notion against him and until the Court, trying an accused, after hearing all evidence for and against him deliver judgment as to the guilt or otherwise, no one would be entitled to make any advance comments or representation or publication against him or with regard to the subject-matter of the trial. The said Guha Neogi has further stated that such principles cannot be compromised under any circumstances, howsoever grave or heinous may be the crime as alleged and it is needless to say that any breach of the principles as indicated earlier would ultimately lead to violation of the Constitutional guarantee as embodied in Article 21 of the Constitution. He has stated that in this case, the acts and conducts of the individuals, groups, newspapers and magazines have really posed a serious threat to a fair trial in the criminal case, as they have been openly and deliberately canvassing the cause of the complainant and have made adverse comments against him in relation to the subject-matter of the trial and in fact, they have already prejudged the issue against him. Such prejudging was inequitable according to the writ petitioner respondent. He has stated that such adverse publicity or holding the demonstration as indicated has created an atmosphere of prejudice against him, and has also created hostility and such an atmosphere would be inconsistent with the idea and requirement of a fair trial and would not also be conducive to the right of the accused to defend himself in any Court of law. Apart from the above, he has stated that such acts and actions as alleged would have a demoralising effect on his character and conduct and is likely to cause genuine apprehension in his mind that the Court may be influenced by the process of such continuous persuasion exerted by such body or bodies of person or organisation as indicated earlier and such act or action was perpetuated with a calculated mind. He has also stated that those publications and the action as indicated would also prejudice the mind of any person against him and that would constitute an attempt to prejudice his defence.

26. It was further reclaimed and reiterated by the writ petitioner Respondent Mr. Guha Neogi that in view of the above, the very basis of the guarantee of a fair trial, as enunciated by Article 21 of the Constitution of India, would not be possible for him to achieve in the connected proceedings and that apart severe adverse public opinion has been caused against him," which again will not be very conducive for a free, fair and unprejudiced trial. It was his further contention that a person accused of a crime, can lawfully be convicted in a Court of law only upon legal evidence as would be adduced, but in the instant case, up to the stage of trial, there has been no such legal evidence, establishing any criminal offence or intention against him, but the news item as indicated earlier, have really and in fact, determined his fate and has practically and for all purposes depicted him as a hardened criminal. In short, it was claimed by him

that in the facts and circumstances of this case it would be very difficult for him to get a fair opportunity and a fair trial. He further pointed out that speedy trial is an integral and essential part of the fundamental right to life and liberty in terms of Article 21 of the Constitution of India and to support or establish such proposition, he has, in his writ petition, referred to several celebrated decisions of the Hon''ble Supreme Court of India and claimed that the way and the manner in which the criminal proceeding had proceeded or is proceeding, would take a further long time and that too for no fault of his and as a result thereof, justice would really be denied to him. Nobody can have any doubt about the trial of an offence completed as speedily as possible, but to find out, at whose instance the trial has been frustrated or who is responsible for such delay, as in (his case, we shall have to look into the several dates as indicated by the learned Magistrate, in his order in question and so also the dates, which we have quoted earlier from the said judgment. Mr. Guha Neogi has, of course, contended that the delay, if any, in the instant case, was not occasioned by any fault on his Part, since he has neither absconded nor intentionally taken any steps to delay the proceedings and he appeared in Court on receipt of the process regularly and as and when hearing was scheduled. In fact, he has stated that he participated in the proceedings without any dilatory tactics. He has, of course, agreed that, he not only moved this Court more than once, but also went to the Hon''ble Supreme Court of India and has claimed that such actions on his part were justified. In support of such submissions, he referred to the Division Bench judgment of this Court as indicated earlier and has stated that the fact that some of the charges as levelled against him, were set aside, would be enough to establish his justification of moving the higher Courts. It is no doubt that the Bench presided over by P.C. Barooah, J. (as His Lordship then was), had set aside some of the charges as sought to be framed against the accused persons, but Their Lordships have specifically directed a speedy trial of the proceedings on the basis of the remaining charges, but thereafter, some steps were taken by Mr. Guha Neogi, which were not ultimately upheld either by this Court or the Hon''ble Supreme Court of India.

27. As it is and on the basis of the dates as indicated earlier, nobody can doubt that the bulk of the time for which the proceeding with the learned Magistrate has been delayed, was consumed by the writ petitioner Respondent Mr. Guha Neogi.

28. In his writ petition before this Court, the writ petitioner Respondent Mr. Guha Neogi claimed that the proceeding as sought to be initiated against him, should be quashed on the cumulative effect of the following factors:

(a) The case of the complainant prima facie is patently absurd and inherently improbable and as such it is a mala fide prosecution. For the ends of justice and in order to prevent an abuse of the process of the court the said mala fide proceeding in the said criminal case is liable to be quashed.

(b) It has become impossible for the petitioner to get a fair trial in the court of

the learned Metropolitan Magistrate, Calcutta in view of the adverse and prejudicial publications and hostile campaigning which has caused serious prejudice to the defence of the petitioner, and

(c) In view of the delay in the disposal of the case and the case being still at the initial stage in spite of the expiry of about 11 years from the making of the complaint and about 14 years from the date of the alleged occurrence any further continuation of the trial would amount to gross violation of Article 21 of the Constitution. It is fit and proper that the proceeding should be quashed by this Hon''ble Court and the petitioner should be discharged from the said case.

29. His specific prayer in the writ petition amongst other was for quashing the impugned Criminal Case No. C/171 pending in the Court of the learned Metropolitan Magistrate, 7th Court, Calcutta and Prohibition commending the Chief Metropolitan Magistrate, Calcutta and the Metropolitan Magistrate 7th Court, Calcutta to forbear from proceeding any further with the said Case No. C/171. He has also prayed for a Writ or writs in the nature of Mandamus commanding Respondents Nos. 1-4 in the writ petition to release him from the bail bond and further commanding the Respondents not to take any action in connection with the order as made in Case No. C/171. An interim order of restraint on the basis of the above prayers, was also asked for in the petition.

30. The affidavit-in-opposition in this case was filed by Mrs. Archana Guha in July 1988 and therein, she claimed that the plea of the writ petitioner Respondent was not bona-fide, since he was personally responsible for the delay of the completion of the proceedings of repeated frivolous grounds. It was her case that on her complaint that she was severely tortured by the writ petitioner Respondent Mr. Guha Neogi and other Police officials in the Police lock-up at Lalbazar and thereafter, on an enquiry being held u/s 202 of the Code of Criminal Procedure, process was issued against them under different sections and ultimately, in the facts and, circumstances as mentioned hereinbefore, the accused persons were committed to sessions.

31. The deponent has also referred to series of orders as passed by this Court and the Hon''ble Supreme Court of India, the full particulars whereof, we have indicated earlier and on that basis, she claimed that if any one was responsible and liable for the delay in completion of the proceeding, it was the writ petitioner Respondent Mr. Guha Neogi and none else. In fact, the deponent has indicated that such fact would also appear from the dates as indicated by the learned Metropolitan Magistrate in his order and which we have quoted earlier. The effect of our scanning the dates and on the basis thereof, we have come to the conclusion about the complicity of the writ petitioner Respondent Mr. Guha Neogi, in having the proceeding delayed as we have indicated earlier. There cannot be any doubt that the exceptions taken by the writ petitioner Respondent or any one, regarding the appearance of Mr. A.P. Chatterjee, was frivolous and intended to frustrate and delay the proceeding. In any event, the effect of such submissions has been negated by two of the learned Judges of this Court and

there can also be no doubt that on the basis of the Division Bench judgment as indicated earlier, the trial should continue and it is also the duty of this Court to see that the order as made by a learned Division Bench of this Court, is honoured and is not frustrated by any means whatsoever. On the basis of such Division Bench judgment, the writ petitioner Respondent was certainly required to be tried under the Sections as indicated in the remand order. We do not know what will be the ultimately outcome of such determinations on remand and as such, we are not saying anything on merits or touching the allegations. But, one thing is certain, that even if a microscopic percentage of the allegations of torture is true, that will not certainly give any credit to any Police officials, in a civilized country like ours and which is also known for appropriately following the rule of law.

31-A. The deponent of the affidavit has also indicated, under what circumstances she came to know about the order made by the Hon''ble Supreme Court of India and thereafter, the steps which were taken and on the basis whereof, the said Court had reviewed their earlier order. It was her further case and claim that the order from the Hon''ble Supreme Court of India was initially obtained by the writ petitioner Respondent, by misleading the Court by making false statements and on due interference by Mr. Chatterjee, such nefarious tactics of the writ petitioner Respondent Mr. Guha Neogi was detected and accordingly, his petition was dismissed. It was her further case that Mr. Chatterjee was never appointed by the State of West Bengal to conduct the case on her behalf nor did she ever request the State Government to make any such appointment on her behalf, to conduct her case. She has stated that in fact, in all "Private complaint" cases the State has no jurisdiction to appoint any Counsel to conduct prosecution on behalf of a private complainant and where the complainant is poor and indigent, he or she can of course, request any State Legal Aid Committee, if at all set up, to hold them by appointing a Counsel on their behalf. It has also been stated by her that at the time, when the complaint was filed by her against the writ petitioner Respondent Mr. Guha Neogi and others, no such Legal Aid Committee had been set-up in the State of West Bengal and such State Legal Aid Committee was established in this State only some years ago and, in any event, the complainant did not make any petition also to the State Legal Aid Committee for any help to have her case prosecuted.

32. The deponent, in paragraph 20 of her affidavit-in-opposition has indicated the dates. Accordingly, there would be no doubt that on frivolous grounds the completion of the concerned criminal proceeding was sought to be delayed by or at the instance of the writ petitioner Respondent Mr. Guha Neogi.

33. We shall indicate the findings of the learned Trial Judge and the order as impeached later and before that, we think, we should have the points as canvassed before us by Mr. Chatterjee noted.

34. He first placed the Division Bench judgment of this Court as indicated earlier and claimed that on the basis thereof, the trial of the Warrant case which was

initiated on the basis of the complaint of Mrs. Archana Guha, should proceed and should not have been stopped and he further indicated that because of the machination of the writ petitioner Respondent Mr. Guha Neogi charges in the concerned criminal case have not as yet been framed and at every steps or whenever the proceeding was going to be taken up for consideration, the writ petitioner Respondent Mr. Guha Neogi took such steps, which according to him were frivolous and intended to frustrate the proceedings. Mr. Chatterjee in his usual fairness stated that in view of the Division Bench order, the proceeding should be allowed to be continued and it is true that at this stage, the writ petitioner Respondent cannot be held to be guilty and that too unless he is found to be so, on tendering of due legal evidence on the charges as framed. It was his further case that whatever steps the writ petitioner Respondent took, were intended to prejudice the pending criminal case and to harass the poor victim lady, in any manner and way the said writ petitioner Respondent liked. Such harassment, according to Mr. Chatterjee, would be against the interest of justice and correspondingly, would be a denial of justice to Mrs. Archana Guha.

35. Mr. Chatterjee referred to Section 468 of the Code of Criminal Procedure, 1973, which deals with the bar to taking cognizance after lapse of the period of limitation and postulates that (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation and (2) The period of limitation shall be --

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

and then, he also referred to Section 482 of the said Code, regarding saving of inherent power of High Court and to the effect that nothing in the 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. He also referred to Section 167 of the Code, laying down the procedure when investigation cannot be completed in 24 hours and on the basis of the explanation which lays down that if any question arises whether an accused person was produced before the Magistrate as required under Paragraph (b) of Section 167(2), the production of the accused person may be proved by his signature on the order authorising detention. Such submissions were put forward by Mr. Chatterjee, since it was the specific case of the complainant that Mrs. Archana Guha was not appropriately produced in terms of the requirements of law and he contended that if she was really produced, then such production should have been proved by tendering the necessary legal evidence, in terms of

the requirements as mentioned above.

36. It was Mr. Chatterjee's submissions that there was in fact, no delay for Mr. Guha Neogi to have a speedy trial since virtually all such delay or delay, if any, as complained of, occurred in the course of proceeding pending before the Courts which again were resulted from his own action. Such submissions were sought to be supported by Mr. Chatterjee, on a reference to the case of *Eddie M. Harrison v. United States* (1968) 20 Law Ed. 2d 1047. It was also submitted by Mr. Chatterjee, on a reference to the case of *United States v. Clarence Ewell and Ronald K. Dennish* (1966) 15 Law Ed 2d 627 which indicates that under the 6th Amendment, guarantee of a speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public acquisition, and to limit it the possibility that long delay will impair the ability of an accused to defend himself. In that case, it has further been indicated that a large measure because of the many procedural safeguards provided an accused, the ordinary procedure for criminal prosecution are designed to move at a deliberate pace and under the said 6th amendment, right to speedy trial is necessarily relative, is consistent with delays and as orderly expedition, rather than mere speed, as is essential ingredient; and whether delay in completing the prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances. In that case, it has also been observed that a defendant can claim no automatic violations of his right to a speedy trial if, without previously having been charged or convicted of a crime, is indicated for the crime several months after he has committed, yet all within the applicable statutes of limits, apart from indicating that an accused claim of possible prejudice for defending himself, as a result of the prosecution's delay in charging him with a certain statutory violations, is insubstantial, speculative and premature, where he mentioned no specific evidence, which has actually disappeared or has been lost and no witnesses who are known to have disappeared, and the charges are based on the same transactions as was involved in a previous indictment. On the basis of the above observations, it was Mr. Chatterjee's contentions that no such prejudice as is required to be established for obtaining the benefit of a speedy trial in the instant case, has been made out or put forward by Mr. Guha Neogi and by any stretch of imagination he cannot claim to have the benefit as asked for in a writ proceedings, the initiation whereof, was hopelessly delayed.

37. It was then submitted by Mr. Chatterjee that the application under Article 226 of the Constitution in question, the order where of, is under appeal, should have been dismissed in limine by holding the same to be misconceived in the facts and circumstances as indicated hereinbefore. Apart from the other fact emanating out of the delay as mentioned hereinbefore and also for availability of other adequate alternative remedies under the statute. In support of such submissions, Mr. Chatterjee firstly, referred to the case of *Smt. Ujjam Bai Vs. State of Uttar Pradesh*, where dealing with the question of jurisdiction and the meaning of judicial or quasi-judicial authority and when writ of certiorari can be

issued or where such writ can lie it has been observed per S.K. Das, J. that jurisdiction means authority to decide. Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is wrong in law or in fact. The question whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature and it is determinable at the commencement, not at the conclusion of the inquiry. It has also been observed that a tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required (i.e. has jurisdiction) to determine. The strength of this theory of jurisdiction lies in its logical consistency. But there are other cases where Parliament when it empowers an inferior tribunal to enquire into certain facts intends to demarcate two areas of enquiry the tribunal's findings within one area being conclusive and within the other are impeach-able, apart from indicate that the jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the tribunal has to try and the determination whether it exists or not is logically prior to the determination of the actual question which the tribunal has to try. The tribunal must itself decide as to the collateral fact; when at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its mind whether it will act or not and for that purpose to arrive at some decision on whether it has jurisdiction or not. There may be tribunals which by virtue of legislation constituting them have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends; but subject to that an inferior tribunal cannot, by a wrong decision with regard to a collateral fact give itself a jurisdiction which it would not otherwise possess and the characteristic attribute of a judicial act or decision is that it binds, whether it is a right or wrong. An error of law or fact committed by a judicial or quasi judicial body cannot, in general be impeached otherwise than on appeal unless the erroneous determination relates to a matter on which the jurisdiction of that body depends. These principles govern not only the findings of inferior courts *stricto sensu* but also the findings of administrative bodies which are held to be acting in a judicial capacity. Such bodies are deemed to have been invested with power to err within the limits of their jurisdiction and provided that they must be accepted as valid unless set aside on appeal. Even the doctrine of *res judicata* has been applied to such decisions. On the basis of such tests as indicated in the above determinations as mentioned and the other tests as laid down, Mr. Chatterjee pointed out that error on the face of the record, which was the alleged basis of interference by the learned Trial Judge, was not appropriate and in the

instant case, whether the proceedings as sought to be initiated, it was judicial or quasi judicial even, there was no occasion for affecting the fundamental right of Mr. Guha Neogi as claimed.

38. While on the question of delay as mentioned earlier, Mr. Chatterjee first referred to the case of V.K. Agarwal, Assistant Collector of Customs Vs. Vasantraj Bhagwanji Bhatia and Others, where the delay was about 20 years after the gold in question, was seized under Customs Act, 1962 and Gold (Control) Act, 1968. Even in that case it has been observed that such delay would be no ground for not proceeding further with the matter inasmuch as the offence in question, was a serious economic offence, which undermines the entire economy of the nation. The delay occasioned in the working of the judicial system by the ever increasing work-load cannot be the ground for justifying the delay.

39. On the basis of such observations of the Supreme Court, Mr. Chatterjee submitted that the offence as has been alleged to have been committed and which, under the observations of the Division Bench determinations of this Court as indicated earlier, is required to be gone into and considered, should not have been allowed to be frustrated on the grounds of delay as taken by the writ petitioner Respondent Mr. Guha Neogi and more particularly, since such delay was caused at his instance. Thereafter, reference was made by Mr. Chatterjee to the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, which was a case under Sections 436 and 437 of the Criminal Procedure Code, 1974 and has observed that speedy trial is a part of fundamental right to life and liberty. In fact, Mr. Chatterjee referred to the determination to the effect that a procedure prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair and just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 and then, he also referred to the case of Kadra Pahadiya v. State of Bihar, AIR 1981 SC 939 which has further ordered that undertrial prisoners cannot be kept in leg irons nor can be asked to work outside jail walls. In fact, it has been stated, on a reference to the case of Hussainara Khatoon v. Home Secretary, State of Bihar (supra) by the Supreme Court, on such criticism being made regarding the shocking state of affairs, they hoped that the anguish expressed and the severe strictures passed by them, the justice system in the State of Bihar would improve and no one shall be allowed to be confined in jail for more than a reasonable period of time, which they thought cannot and should not exceed one year for a sessions trial. But, they found that situation has remained unchanged and the prisoners, whose case was being dealt with in the case under reference, who entered the jail as young lads 12 or 13, have been languishing in jail for over 8 years, for a crime which perhaps ultimately they may be found not have committed. In fact, it was the submission of Mr. Chatterjee that in such

circumstances, the determinations as made in the two cases as indicated hereinbefore, would not apply in the present one and in fact, such determinations were and are distinguishable.

40. Reference was made thereafter, by Mr. Chatterjee to the Full Bench determinations of the Patna High Court in the case of *The State Vs. Maksudan Singh and Others*, where, while dealing with Article 21 of the Constitution and right to speedy public trial or the effect of violations thereof it has been observed by majority that it cannot be said that the violation of the right of speedy and public trial pertains to the realm of sentence alone. Once the constitutional guarantee of speedy trial and the right to a fair, just and reasonable procedure under Article 21 has been violated then the accused is entitled to an unconditional release and the charges levelled against him would fall to the ground. 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. An accused person on the ground of inordinate delay should claim the right long before the conclusion of the trial and before the stage of holding him guilty or otherwise arises. The assumption that he must be first convicted before he can invoke such a right and only, thereafter, he can claim some leniency in the quantum of sentence at the stage of its imposition or later in the appellate forum therefore, cannot be accepted. In the case of gross and inordinate delay in trial Court itself, 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 infracted. It is not open to the prosecution to suggest that despite the violation of the constitutional guarantee, the belated trial must continue and on the outlying chance of a conviction being recorded, some benefits in the imposition of sentence be given for violating the right which has been declared as both a human right and constitutional one, apart from indicating that since public trial under Article 21 in India is identical in content with that under the Sixth Amendment of the American Constitution, it would follow a fortiori that American precedents on the point would become identically applicable as persuasive on this facet of Article 21. Further, there is a similar identity or in any case similarity betwixt Article 14 of our Constitution and the equal protection clause of the 14th Amendment of the American Constitution. Because of this, American precedent on the 14th Amendment has for long been attracted and relied upon in the interpretation of Article 14. Thus what seems to be true of Article 14 qua equal protection clause of the 14th Amendment is equally true in the context of the 6th Amendment of the said Constitution qua Article 21 of our Constitution. Therefore American precedents on the Sixth Amendment of their Constitution would be equally attracted and applicable as persuasive precedent on this facet of Article 21 of our Constitution in India. Thereafter, Mr. Chatterjee referred to another Full Bench Judgment of the Patna High Court in the case of *Madheshwardhari Singh v. State of Bihar* AIR 1986 Patna 324: (1986 Cri LJ 1771), where, while dealing with Article 21 of the

Constitution and right to speedy public trial it has been observed that in all criminal prosecutions the right to a speedy public trial is now an inalienable fundamental right of the citizen under Article 21 of the Constitution. This cannot be allowed to be whittled down on any finical ground of the hoary origin of this right in the constitutional history of Great Britain and America, nor considerations of affluence of developed countries are even remotely relevant or germane in this context. Therefore, it is not possible to read down the right of speedy and public trial in India for the fact that our society as yet is not as developed or affluent as the Anglo-American one, apart from holding that the fundamental right to a speedy public trial extends to all criminal prosecutions for all offences generically, irrespective of their nature. It is not confined or constructed to either serious or capital offences only and the right under Article 21 of our Constitution to a speedy public trial is identical in content with the express constitutional guarantee inserted by the Sixth Amendment in the American Constitution. The Sixth Amendment to the American Constitution in terms says, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. Even on principle it is obvious that on the plain language of the Sixth Amendment to the American Constitution, the fundamental right of a speedy trial is not confined to any particular category of offences. The language employed is unfettered and without any such restriction. Coming now to precedent the American precedent, which is the fountain-head of the concept of speedy public trial, has now consistently extended it without limitation to all offences and all criminal prosecution.

It has also been indicated in that case that the right to speedy public trial is applicable not only to the actual proceedings in Court but includes within its sweep the proceeding of police investigation in a criminal prosecution as well and in the majestic 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 all the period from the date of the levelling of the criminal charges to the date of the rendering of the judgment in Court. Unless it is so held, the cherished fundamental right herein would be whittled down to a teasing mirage, where the investigation of the offence itself may protract on for years and, thus rendering the very concept and purpose of a speedy trial purely illusory. Therefore, a speedy trial in a criminal prosecution herein includes within it both the police investigation of the crime and the later adjudication in Court based thereon.

41. Mr. Chatterjee pointed out the case of State of Bihar Vs. Uma Shankar Ketriwal and Others, where the Supreme Court had occasion to decide and consider the effect of laches in a Criminal trial, which was pending for 20 years, even though the accused respondents were themselves largely responsible for the slow progress of the trial and the case involved commission of a serious offence. It has been held in that case that the delay being inordinate, the Supreme Court will not interfere with the High Court's order for quashing the proceedings against the accused. The said case, Mr. Chatterjee submitted, was

distinguishable on the facts of the present one and he claimed that the test would be, who was attributable or answerable for the delay, which according to him, in this case, was Mr. Guha Neogi. It was indicated by him further that in the United States of America, to have a speedy trial is the fundamental right and on such submissions, he referred to the two United States cases reported in the United States Reports, the particulars whereof, we have indicated earlier. He further submitted that even though, in our Constitution, such right to have a speedy trial is not indicated specifically, but on reading of the provisions of the Constitution and the judgments of the Supreme Court, the same can be evolved in a proceedings in our country. But he contended that even then the delay being attributable or the said Mr. Guha Neogi being answerable for the same, no interference was needed or required by the learned trial Judge.

42. Thereafter, Mr. Chatterjee referred to and relied on the single Bench decision of this " Court in the case of Ranjit Guha Neogi v. State of West Bengal, (1979) 1 Cal HN 262, some particulars whereof, we have indicated earlier and stated on a reference to paragraph 25 of the said report to the effect where it has been observed that the allegations are that respondent No. 5 was tortured by the accused persons and the charges against them are under the ordinary penal laws of the land under various sections of the Indian Penal Code, unconnected with the discharge of official duty. On the allegations it is obvious that the alleged offence could not be in the discharge of official duty and not merely in excess of it. If it was so, it could not be said that the offenders were entitled to protection in respect thereof as public officers. In such case they cease to be part of the State in respect of the alleged offences, so that as at present advised there appears to be no impediment for the law advisers of the State to conduct the case on behalf of any private party whereon these persons have been alleged as perpetrators of such crime. There is therefore no illegality on the part of Mr. Chatterjee in breach of his office duty as the Standing Counsel of the State for accepting the brief on behalf of respondent No. 5 against the alleged commission of offences under the penal laws of the land on the part of the accused persons which are unconnected with the discharge of official duty. It is accordingly held that there has been no violation of the provisions of R. 45 as it now stands of the Legal Remembrancer's Manual 1971 on the part of Mr. Chatterjee as the Standing Counsel of the State, the fact that the delay in having the proceedings disposed of or taken up for consideration earlier and the delay being admittedly attributable for the laches of the said Mr. Guha Neogi, he should not have been allowed to contend and rely on Section 167 of the Code of Criminal Procedure 1973 or to take shelter of the said section, in support of his contentions that the delay in this case was in any way attributable to the appellant.

The explanation under the said section indicates that if any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by signature on the order authorising the detention. On the question, if the said explanation is retrospective or not, Mr. Chatterjee firstly, referred to the case of

Raj Narain Vs. Superintendent, Central Jail, New Delhi, where, per majority, it has been observed that prisoners, who are under-trial are brought before the Supreme Court on rule nisi and are kept in custody of the Supreme Court. This is a transferred custody on behalf of the Magistrate. The Magistrate cannot recall the prisoner from custody of the Supreme Court by his order and he is only required to intimate to the jail authorities, the prisoner and the Supreme Court that the original remand has been extended while adjourning the case. This is sufficient compliance with the requirements of the law in such special circumstances. The object of production of the prisoner before the Magistrate is more than answered by his production before the Supreme Court because the prisoner has the protection of his interest transferred from the Magistrate to the Supreme Court. There is nothing in the law which required the personal presence of the prisoner before the Magistrate because that is a rule of caution for Magistrate before granting remands at the instance of the police. However, even if it be desirable for the Magistrate to have the prisoner produced before him, when he recommit him to further custody, a Magistrate can act only as the circumstances permit. Secondly, he relied on the case of M. Sambasiva Rao v. Union of India AIR 1973 SC 850: (1973 Cri LJ 663), where, while dealing with Section 344 of the Criminal Procedure Code, it has been observed that the order of remand cannot be considered to be invalid merely because an accused has not been produced before the Magistrate. Thirdly, reference was made by Mr. Chatterjee to the case of Sandip Kumar Dey Vs. The Officer-in-charge, Sakchi P.S., Jamshedpur and Others, where, dealing with Section 167 of the Criminal Procedure Code, it has been observed that though the order of remand passed in the absence of the prisoner in Court is not vitiated, it is highly unsatisfactory. Remand orders cannot be passed mechanically and the Magistrate passing an order of remand ought, as far as possible, to see that the prisoner is produced before the Court when the remand order is passed. Mr. Chatterjee, fourthly placed reliance on the case of A. Lakshmanarao Vs. Judicial Magistrate, First Class, Parvatipuram and Others, where, dealing with Section 344 of the Criminal Procedure Code, it has been observed that as a matter of law personal presence of an accused person before a Magistrate is not a necessary requirement for the purpose of his remand u/s 344, Cr. P.C., at the instance of the police, though as a rule of caution it is highly desirable that the accused should be personally produced before the Magistrate so that he may, if he so chooses, make a representation against his remand and for his release on bail. He indicated further that the submissions as made by him now and in this appeal, were not made on new facts and as such, those submissions, on the basis of the ratio decidendi of the cases as referred to hereinbefore, would be enough to come to the conclusion that if any one has caused or was responsible for the delay in having the concerned proceedings completed, that, was the said Mr. Guha Neogi and not the appellant Mrs. Archana Guha and that being the position, the interference as made by the learned trial Judge, was not proper.

43. The case of R.P. Kapur Vs. The State of Punjab, which necessarily deals with

the inherent power of High Court, for making any interference u/s 561A of the Criminal Procedure Code and lays down that such power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash 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 and has also indicated some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are:--

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; It is a matter merely of looking at the complaint or the First Information. Report to decide whether the offence alleged is disclosed or not.

(iii) Where the 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 the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 561A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or 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, was referred to and relied on by Mr. Chatterjee, in support of his contentions or for supplementing them to the effect, that the learned trial Judge was not, in the circumstances of the case, justified in quashing the concerned proceedings under the provisions of Article 226 of the Constitution of India. In fact, he claimed that the observations in the case as mentioned hereinbefore, would appropriately justify his submissions or support them. While on the point, Mr. Chatterjee also made reference to the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, where, it has been observed that the proceedings may be quashed by High Court to prevent abuse of process of Court and to secure ends of justice. Fact that a similar application for quashing the proceedings on a

former occasion was rejected by the High Court on the ground that questions involved were purely questions of fact which were for the Court of fact to decide, is no bar to the quashing of the proceedings at the later stage -- Such quashing will not amount to revision or review of the High Court's earlier order-- Order u/s 561A should be passed in view of the circumstances existing at the time when the order is passed, and it was submitted by him, that not only on the facts of this case, but also on the basis of the determinations of the Division Bench of this Court presided over by P. C. Barooah, J. (as His Lordship then was), and the particulars whereof, we have indicated earlier, the learned Judge was not justified in having the proceedings quashed at this stage and more particularly under the jurisdiction, which he was exercising at the relevant time. The crux of Mr. Chatterjee's submissions were that under Article 226 of the Constitution of India, the order of quashing proceedings as made by the learned trial Judge, in the facts and circumstances of the case, was not germane or proper. Thereafter, Mr. Chatterjee mentioned the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , where the Supreme Court has observed that it is true that in coming into a decision as to whether a process would be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates into an order u/s 204. Thus in the following cases an order of the Magistrate issuing, process against the accused can be quashed or set aside;

- (1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make put absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) Where the discretion exercised by the Magistrate in issuing process" is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a authority and the like and has observed in that case that the order of the Magistrate issuing process against the accused persons is a

very well reasoned one which took into consideration the allegations in the complaint as also the evidence adduced in support of it. On a consideration of the evidence the Magistrate was satisfied that a prima facie case against the persons was made out and he accordingly issued process against them. The High Court went into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussions not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter was pending u/s 202, has held that the order of the Magistrate was illegal and was fit to be quashed. This was an entirely wrong approach. On the basis of those observations, Mr. Chatterjee submitted that on the basis of the guidelines as indicated by the Supreme Court, there was no case made out before the learned trial Judge, on the basis of the facts of this case, about the inherent improbability and claimed, that even on the basis of the tests as laid down, the learned Judge was wrong and not justified in making the necessary interference in this case and thus to quash the proceedings. It was claimed by him that since the complaint in the instant case could at this stage could not be claimed to be patently absurd or inherently improbable, as the hearing of the proceedings has not taken place or has so long been frustrated and delayed mainly at the instance of Mr. Guha Neogi, so the determinations in the case reported in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, as referred to in the impugned judgment, will not apply. That was also his submissions in respect of the case reported in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, and he pointed out that the question for consideration in that case, was different from the present one and as such also the determinations as made therein, would not apply with such efficacy as the learned Judge has thought and further he failed to consider that even under the Code, there was no bar for the subsequent application. He, of course, stated that in this case, shelter to such contingency was not required or expected to be taken, because even under the Division Bench judgment of this Court as indicated earlier, the proceedings in question, has not at yet been taken up, which should have been taken up, but the delay has really been caused at the instance of Mr. Guha Neogi and as such also, the learned Judge should not have made the necessary interference.

44. In the case of Kadra Pahadiya v. State of Bihar, AIR 1981 SC 939 the Supreme Court, while dealing with Article 21 of the Constitution of India, has observed that the under-trial prisoners should be provided with a fairly competent lawyer at the State expenses and on further consideration of Section 56 of Prisoners Act (9 of 1984), has indicated that those prisoners cannot be kept in leg irons nor can they be asked to work outside jail Walls. The said determination, no doubt, as pointed out by Mr. Chatterjee indicates that such prisoners cannot be kept in detention in prison indefinitely. But he claimed that the facts, of that case are distinguishable from the present one and the tests as

indicated therein or the norms as laid down, would not be applicable in the facts of this case, since if any one was responsible for the delay in having the proceedings completed or concluded that was primarily Mr. Guha Neogi and none else and at least not the appellant Mrs. Guha. He then claimed that the learned Judge was not justified in having the proceeding quashed on the basis of the determinations as made in that case. It was Mr. Chatterjee's further submissions that the making of the impugned order by the learned Judge, on a reference to the case of State of Karnataka Vs. L. Muniswamy and Others, was also not proper. In the facts of that case, it has been held that there was no material, on the basis of which any tribunal could reasonably come to the conclusion that the accused were in any manner connected with the incident leading to the prosecution. The High Court was therefore justified in holding that for meeting the ends of justice, the proceedings against the rest of the accused ought to be quashed, and Mr. Chatterjee contended that since in this case, the stage for coming to such conclusion of "no materials" available, has not as yet reached so the observations as made therein, cannot be applied, and as such, the learned Judge also fail into errors in making his determinations. Similarly, Mr. Chatterjee claimed that the case of S. Guin and Others Vs. Grindlays Bank Ltd., to which the learned Judge has made a reference, will have no application, because that was a case, where the acquittal was set-aside on the basis of the proceedings pending for a long time after trial. He repeated that since in this case, such stage has not as yet arrived, so the determinations as made therein, cannot be profitably applied here. It was Mr. Chatterjee's submissions that similar would be the answer against the case of Rakesh Saxena Vs. State, the more so when, the proceedings as involved in this case, has not as yet reached the framing of charge and the delay, if any, has been caused, as indicated earlier, at the instance of Mr. Guha Neogi.

45. There was no doubt or any dispute that the case under consideration, was a warrant case and as such, Mr. Chatterjee claimed that firstly, evidence was to be concluded and secondly on such conclusion of evidence, the learned Magistrate would be free to frame or not to frame a charge. He, thirdly claimed that since Mr. Guha Neogi, is all along preventing or has prevented the framing of the charge or necessary tendering of evidence at every stage of tendering evidence, to get the proceedings frustrated so the learned Judge should not have made any interference in the proceedings and he should have allowed the same to be initiated, completed and concluded, in terms of the Division Bench judgment of this Court as mentioned earlier.

46. Mr. Dilip Kumar Dutt, appearing for Mr. Guha Neogi, claimed and contended that the allegations on the basis whereof, the proceedings were sought to be initiated, were patently absurd and improbable. It was his first and foremost claim and that apart for the delay in having the proceedings as initiated, completed was not due to Mr. Guha Neogi or the other accused persons but the same was mainly due to the act, actions and absence of the complainant Mrs. Archana Guha.

47. While on the question of delay, it was pointed out by Mr. Dutt that on or about 19th July 1974, the complainant Mrs. Guha was initially produced under Dum Dum P.S. Case No. 108 and thereafter, she was reproduced on 2nd August 1974, before the concerned learned Magistrate at Alipore, in T.P. Case No. 979 of 1973 and on 23rd August 1974, she was produced from Jail custody before the learned Magistrate, when a Bail petition was moved and the same was rejected. It was further pointed out by Mr. Dutt that on 13th September 1974, there was a proceeding under MISA against Mrs. Guha which order was challenged on 21st May 1976, under Article 226 of the Constitution of India. It was pointed out by him that even up to that stage, there was no complaint made by her regarding the alleged torture meted out her by the Police officials and only in September 1975, she for the first time, made the complaint about weakness of her lower limbs, Mr. Dutt also pointed out that on 17th November 1976, Mrs. Guha was granted parole for her various ailments and on 3rd May 1977, she was released and on 28th August 1977, the present complaint was filed after about 3 years 3 months and 17 days. The above facts were pointed out by Mr. Dutt, to establish the cause of the first phase of delay in lodging the complaint or filing the FIR.

48. Therefore, on the question of delay, Mr. Dutt pointed out that to delay during the period after initiation of the complaint was also mainly due, as aforesaid, for the acts, actions and steps taken by Mrs. Guha and as a result thereof, speedy trial which is a prerequisite under or in terms of the determinations of the Supreme Court of India in the case of Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, the findings whereof as made by the Supreme Court and some particulars whereof, we have indicated earlier, have been frustrated. We have further indicated earlier the submissions made by Mr. Chatterjee as to why the said determinations would not apply in the facts and circumstances of the present case.

49. Mr. Dutt, in support of his submissions that the entire proceedings would be bad because of delayed initiation, placed reliance on the case of Thulia Kali Vs. The State of Tamil Nadu, . The accused in that case was convicted for the murder of a woman of 40 years and was sentenced to death u/s 302 I PC and for committing theft of jewels of the victim u/s 379 of IPC. The High Court of Madras affirmed the conviction and sentence of the accused and on a special leave being granted, in the facts and circumstances of the case it has been held that (i) First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance or the report can hardly be over-estimated from the standpoint of the accused. Such finding has been made as according to the Supreme Court, the object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the number of the eye-witnesses present at the scene of occurrence, apart from that it has been held that delay in lodging the first information report quite often results in embellishment which is

a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or connected story as a result of deliberation and consultation and it is therefore essential that the delay in the lodging of the first information report should be satisfactorily explained. In that case it has been held that there was delay of more than 20 hours in lodging the F.I.R. though the police station was only at a distance of two miles. Hence the circumstance would raise considerable doubt regarding the veracity of the case and it is not safe to base conviction upon it. (ii) As there was discrepancy in the evidence of the prosecution witnesses as to the entrustment of jewels involved in the crime, and the prosecution did not examine the person to whom they were stated to have been entrusted, it was essential for the prosecution to examine that person as a witness and its failure to do so would make the court draw an inference against the prosecution, (iii) The knife alleged to have been used in stabbing the victim was found by the chemical examiner to be not stained with blood, and it was not clear why the accused should keep it on his bed where he had ample opportunity to throw away the knife in some lonely place, (iv) Thus the Supreme Court does not normally reappraise evidence in an appeal under Article 136 of the Constitution, but that fact would not prevent interference with an order of conviction if on consideration of the vital prosecution evidence in the case, this Court finds it to be afflicted with ex facie infirmity. It was further observed by the Supreme Court, while making the observations in clause (iii) that looking at all the circumstances, it was not possible to sustain the conviction of the accused. Thereafter, Mr. Dutt referred to the case of Balaram Roy v. The State, (1983-84) 88 Cal WN 238, where the FIR was lodged after about 10 days of the occurrence and in the said FIR all that is said was that the delay was due to the fact that the informant was in a state of mental disbalance. It is true, that even if the police had refused to record the FIR earlier, it was perhaps not possible for the informant to have mentioned that fact in the FIR itself and on consideration of the facts and circumstances it has further been indicated that there are some circumstances which cast some doubt as to the truth of the allegation made by PW 1. According to PW 1, when the police refused to record the FIR, his sister Charubala went to Barasat to make some Tadbirs with the higher authorities. Thereafter, she came and told her brother PW 1 that the FIR may now be recorded. If this was true, then certainly the prosecution story might have got some support but unfortunately, Charubala in her evidence does not claim to have gone at Barasat to make Tadbirs. She says in cross-examination that she went to the P.S. along with PW-1. Therefore, the evidence of PW 1 that Charubala made Tadbirs as a result whereof the information was eventually recorded is not corroborated by the testimony of Charubala herself. In the case of Thulia Kali as mentioned earlier, the FIR was lodged after 20 hours. Such being the position of law, in respect of the effect of the delayed filing of the FIR, it was Mr. Dutt's specific submissions that on the basis of the delayed FIR/complaint which was lodged admittedly alter 3 years 3 months and 17 days, the order as made by the learned Trial Judge was due, appropriate and proper.

50. While on the question of delay in disposal of the case or the effect thereof, Mr. Dutt placed reliance on the case of *State of Maharashtra Vs. Champalal Punjaji Shah*, which has indicated that a fair trial implies a speedy trial. But in deciding the question whether there has been a denial of the right to a speedy trial, the Court is entitled to take into consideration whether the defendant himself was responsible for a part of the delay and whether he was prejudicial in delay and whether he was prejudiced in the preparation of his defence by reason of the delay and the right to a speedy trial is implicit in the right to a fair trial which has been held to be part of the right to life and liberty guaranteed by Article 21 of the Constitution. While a speedy trial is an implied ingredient of a fair trial the converse is not necessarily an unfair trial, if nothing is shown and there are no circumstances entitling the court to raise a presumption that the accused had been prejudiced, in appeal against conviction there will be no justification for the appellate Court to quash the conviction on the ground of delayed trial only. On the basis of the above determination or following the observations therein, the specific submission of Mr. Dutt was that since the complainant Mrs. Archana Guha was responsible for the delay in the matter of Mr. Guha Neogi to have a fair and speedy trial, the learned Trial Judge, made no wrong in having the intended proceedings quashed, even in a Writ proceedings. Then a reference was made by Mr. Dutt to the case of *T.V. Vatheeswaran Vs. State of Tamil Nadu*, where the question whether a death sentence was liable to be quashed for the prolonged delay in execution was considered and it has been observed that prolonged detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death. The dehumanising factor of prolonged delay in the execution of a sentence of death has the constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way, as to offend the constitutional guarantee that no person shall be deprived of his life or personal liberty except according to procedure established by law. The appropriate relief in such a case is to vacate the sentence of death. Delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death, to invoke Article 21 and demand quashing of the sentence of death. The cause of the delay is immaterial when the sentence is death. Be the cause for the delay, the time necessary for appeal and consideration of reprieve or some other cause for which the accused himself may be responsible, it would not alter the dehumanising character of the delay, apart from holding that Articles 14, 19 and 21 are not mutually exclusive. They sustain, strengthen and nourish each other. They are available to prisoners as well as free men. Prison walls do not keep out Fundamental Rights. A person under sentence of death may also claim Fundamental Rights. The flat of Article 21 is that any procedure which deprives a person of his life or liberty must be just, fair and reasonable. Just, fair and reasonable procedure implies a right to free legal services where he cannot avail them. It implies a right to speedy trial. It implies humane conditions of detention, preventive or punitive. "Procedure established by law" does not end

with the pronouncement of sentence; it includes the carrying out of sentence.

51. While on the point of delay, Mr. Dutt also referred to the observations in the case of Srinivas Gopal Vs. Union Territory of Arunachal Pradesh (Now State), there the delay was of 91/2 years in proceedings with the criminal prosecution for an offence of rash and negligent driving u/s 279 read with Section 304-A/338 IPC which was not a very grave offence and it has been observed in the facts of that case that the offence of rash and negligent driving is neither a grave and heinous offence nor an offence against the community as such, though all criminal offences are crimes against society. Having regard to the nature of offence there is enormous delay in proceeding with the criminal prosecution by the appellant-9 years. Quick justice is a sine qua non of Article 21. Keeping a person in suspended animation for 91/2 years without any cause at all, cannot be with the spirit of the procedure established by law. It is, therefore, just and fair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further. If the principles of the Code of Criminal Procedure applied, the taking of cognizance of the offence was barred by Section 468 of the Code and finally, it has been observed that in the circumstances of that case it was not necessary to decide whether cognizance was properly taken, when cognizance was taken and whether the extension of period of limitation u/s 473 must precede the taking of the cognizance of the offence. Thereafter, Mr. Dutt firstly, referred to Full Bench decision of the Patna High Court in the case of The State Vs. Maksudan Singh and Others, , the particular and findings whereof and why those findings would not be applicable as claimed by Mr. Chatterjee, have been indicated earlier. Then, Mr. Dutt referred to the case of Madheshwardhari Singh v. State of Bihar (1986 Cri LJ 1771) (Patna) (FB) (supra), the findings where of and so also why they will not be applicable in the case, as contended by Mr. Chatterjee, we have indicated earlier. Then, further reference was made by Mr. Dutt to the case of Rakesh Saxena Vs. State, where a trader in the lowest rung of the hierarchy in the foreign Exchange Division of a Bank was charged with certain offences. The framing of charge was challenged by the accused and it has been held that when the trial of an offence committed six years ago is bound to take further two or three years and it is extremely doubtful whether it will at all result in conviction, no useful purpose will be served by allowing the prosecution to continue. The charges in such a case are liable to be quashed and the distinguishing features of this case, as pointed out by M r. Chatterjee, we have indicated earlier. Thereafter, reference was made by Mr. Dutt to the case of Maj. Genl. A.S. Gauraya and Another Vs. S.N. Thakur and Another, and on the basis of the observations as made therein, he claimed that when in the instant case, the process of law has been misused to harass Mr. Guha Neogi so Mrs. Archana Guha was not entitled to any relief and the learned Trial Judge was right and justified in directing to have the proceedings quashed.

While on his submissions on delay or the effect of the same by the party causing such delay, Mr. Dutt relied on the case of State of Bihar Vs. Uma Shankar Ketriwal and Others, where the case was initiated through a report lodged with

the police on the 9th of April 1960 with the allegation that the respondents' firm which held a licence for dealing in iron and steel had misappropriated a large quantity of G.C. sheets meant for distribution to quota and sub-quota holders. After investigation a police report was submitted on the 23rd December 1962 to a Bhagalpur Magistrate who took cognisance of the case on the 25th January, 1963. However, the charge against the respondents was framed as late as 15th September, 1967 and since then the progress of the case was very tardy as the orders passed therein were challenged in appeals or on the revisional side from time to time. Ultimately in 1979 the respondents made two applications to the High Court praying that the proceedings against them be quashed and the same were accepted through the impugned order. The High Court held for various reasons that the police report did not disclose any offence against any of the respondents. Another reason for accepting the two applications may be stated in the words of the learned single Judge.

"Another important aspect of the matter is that the prosecution commenced in the year 1963 and it is still going on in the year 1979. It is true that the accused persons themselves are to be partly blamed for this delay because several revision applications have been filed at their instance in the High Court and in the district Court. The situation, however, continues to be unjustified because the last revision application was some time disposed in 1973 and the record was returned in 1974. This fact has been stated by the learned counsel for the petitioners and five years have elapsed since then. I am told that four witnesses have been examined and the last witness was examined in April, 1979 and after that no witness has been examined. It has been stated in the order sheet that prosecution is not in a position to know the addresses of the witnesses who are mostly Government Officials. Luxury of protracted trial cannot be allowed to the prosecution. If they did not know the addresses of their own witnesses and if the prosecution was not in a position to conclude its evidence by now it will be an abuse of the process of the Court to allow the prosecution to go on any further." The particulars or the findings whereof, we have also quoted earlier with the submissions made against the applicability of the same to this case by Mr. Chatterjee. On the basis of such determinations it was Mr. Dutt's contentions that even though the said Mr. Guha Neogi was partly responsible for the delay but the major part of such delay having been occasioned because of the action, inaction and non-action of the complaint Mrs. Archana Guha, the interference as made by the learned trial Judge, cannot be said to be inappropriate. Thereafter, reference was made by Mr. Dutt to the case of N.C. Nagpal and Others Vs. The State and Another, where a learned single Judge of this Court had occasioned to consider the nature and scope of inherent power of this Court u/s 482 of the Code of Criminal Procedure, 1973, for quashing. In that case, it would appear, that a complaint was filed alleging that the petitioners entered into a criminal conspiracy to cheat the complainant and thereby induced him to pay the price of a machine for which he had ordered, but on getting delivery, it was found that the machine was not of the model as ordered for. The Magistrate took cognizance

upon examination of two witnesses and the complainant who produced certain letters and documents and issued summons against the accused person under Sections 120B and 420 of the Penal Code. After appearance, the petitioners filed an application for an order of discharge u/s 245(2) of the Code of Criminal Procedure. On the rejection of the said application, the petitioners obtained the Rule for quashing the proceeding. It was inter alia submitted that the allegations made even if accepted, made out at best a case of breach of contract but not of cheating. On behalf of the complainant it was urged that at this stage, the Court could not evaluate evidence nor could it look into documents filed by the petitioners along with the revisional application and on such facts it has been held that in exercising the inherent power, the scope is much more expansive in that this Court can quash a proceeding for ends of justice or to prevent abuse of the process of the Court. That necessarily means that while exercising inherent power the Court need not confine itself to the propriety, legality or correctness of the order of the Magistrate and for that matter the materials on which such order was passed, apart from holding that while exercising its inherent power for quashing a proceeding in which process has only been issued, this Court can look into and rely upon materials, besides those on which process was issued, which can be translated into admissible and relevant evidence, but it should not embark upon an enquiry in which an appreciation of the materials may be necessary to support or discharge the accusation. For establishing further that any delay in Criminal trial, when occasioned by the default of the prosecution, Court can have the trial quashed and expeditious trial is an essential part of fundamental " right and the same is implicit in Article 21 of the Constitution of India. Reference was made by Mr. Dutt to a single Bench judgment of this Court in the case of Mihir Kumar Ghosh Vs. State of West Bengal and Others, In that case, a prosecution for the offences alleged to have been committed by the petitioner between the period of May, 1971 and March, 1972 was started before the Special Judge who took cognizance of the offence after examining the complainant. The Public Prosecutor did not examine all the witnesses during the period from 1976 to March, 1987 and no charge could be framed and thereupon the petitioner moved the writ petition for quashing the trial contending that as an accused he has a right to speedy trial under Article 21 of the Constitution and his right to a fair, just and reasonable procedure as guaranteed by the said Article 21 has been violated and, as such the charges against him should be quashed and because of the pendency of the criminal trial for 15 years for no default on his part, his pension and other retiring benefits have been withheld and it has been indicated that it is now well settled that Article 21 of the Constitution would include within its wide scope the right to speedy and public trial which indeed is a basic human right. Undoubtedly an expeditious trial is the very essence of criminal justice and there can be no manner of doubt that notorious delay in trial, if occasioned entirely by the default of the prosecution, would by itself constitute denial of justice, apart from indicating that under our Constitution though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by the

Supreme Court. By speedy trial and by speedy that is meant reasonably expeditious trial, an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. While making such determination the learned trial Judge has further indicated that the Supreme Court in the case of *S. Guin v. Grindlays Bank* (1986 Cri LJ 255) (*supra*), have spelt out that delay of years even dehors any question of default would defeat justice and, therefore, a trial beyond 7 years from the date of the offence is not to be countenanced in a proceeding. The delay in the case under consideration was admittedly for 15 years. In the case under consideration, the learned Judge has further observed that the constitutional right to speedy trial on a fair, just and reasonable procedure as recognised under Article 21 of the Constitution was plainly violative in the case before him. On the basis of the determinations, it was Mr. Dutt's specified claim that since the complainant Mrs. Archana Guha and not Mr. Guha Neogi, was responsible for the delay, so the learned trial Judge was justified in making the interference and in the manner, as he did.

52. Mr. Dutt also made a reference to the Division Bench judgment presided over by P.C. Barooah, J. and the particulars whereof, we have indicated earlier and stated that the fact that the said Division Bench had accepted that the proceedings as initiated could not be treated as a Session triable one, but the same was a warrant case and has set aside that part of the proceedings, which dealt with a Session triable case remanded the matter back to the learned Magistrate, with directions to proceed with a trial in accordance with the procedure laid down for the trial of warrant cases, instituted on the basis of a complaint, shows that up to the date of the said judgment, which was 13th May, 1980. Mr. Guha Neogi was acting bona fide and the stand as taken by him, was not absurd. The fact that the said Mr. Guha Neogi partly succeeded before the concerned Division Bench, according to Mr. Dutt, established the fact as indicated above and it was his further and specific submissions that for any delay or absurdity or when in a case of the present nature, there has been excessive prejudicial publication; the trial was and is bound to be vitiated. In support of such submissions, Mr. Dutt referred to the case of *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, , where, while dealing with scope of the enquiry u/s 202 of the Criminal Procedure Code, 1898, it has been held that the scope of the inquiry u/s 202 of the Code of Criminal Procedure is extremely limited limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. In proceedings u/s 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued

against him or not. It has also and further been held that the Magistrate in such proceedings can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused, apart from indicating that an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of complaint, by legally competent authority and the like. It was Mr. Dutt's further submissions that u/s 482 of the present Code, which deals with saving inherent power of High Court, and on following the principles as indicated earlier, the learned trial Judge was justified in making the interference as he did.

53. Turning now to the question of the power of the High Court in making any interference in the matter of quashing a criminal proceeding under Article 226 of the Constitution of India, and if that is possible and permissible, Mr. Dutt placed reliance on the case of *The Delhi Development Authority, New Delhi Vs. Lila D. Bhagat and Others*, where, it has been observed that in an appropriate case it may be, rather, is, permissible to protect a person from illegal and vexatious prosecution by grant of an appropriate writ or in exercise of the inherent or revisional powers of the High Court. On the basis of such determinations, Mr. Dutt claimed that since the complaint in the instant case was illegal and by such illegal complaint a vexatious prosecution was sought to be initiated and more particularly when, Mr. Guha Neogi succeeded in 1980 before the Division Bench in establishing that his case was not absolutely an absurd one and thereafter, only in 1987, evidence of the complainant Mrs. Guha was recorded only in part,

so the power as exercised by the learned trial Judge under Article 226 of the Constitution of India, in having the proceeding quashed was not inappropriate. Mr. Dutt also referred to the case of Superintendent and Remembrancer of Legal Affairs, W.B. v. Mohan Singh (1975 Cri LJ 812) (SC) (supra), some finding whereof, we have indicated earlier, including the submissions made by Mr. Chatterjee against the said determinations and claimed that continuation of the proceedings in the instant case would be bad even if the initiation was not bad and on the basis of the determination as referred to hereinbefore, it was also Mr. Dutt's claims that as the purported initiation of the proceedings, through the concerned complaint was nothing but an abuse of the process of the Court, the said proceeding was duly and appropriately quashed by the learned trial Judge, even when, he was sitting in the jurisdiction under Article 226 of the Constitution of India.

54. While on his submissions on absurdity or to establish such fact, Mr. Dutt referred to the petition of complaint and stated that the same would show that at 1.30 a.m. on 17th July, 1974, there was a raid at the Jawapur Road premises at Dum Dum, but such statements which were available from paragraphs 2 and 3 of the petition of complaint were really falsity by the facts as stated in paragraph 9 of the said complaint. In any event, he pointed out that the seizure list was drawn up between 10.00 a.m. to 11.45 a.m. of 18th July, 1974 and the complainant Mrs. Archana Guha had received one copy of the same. It was further pointed out by Mr. Dutt that the records of the concerned case would show that Mrs. Guha was produced on 19th July 1974, from the custody and the I.O. prayed for Police custody till 2nd August 1974, which prayer was allowed and thereafter, on 2nd August 1974, the accused persons including Mrs. Guha were produced from Police custody and they were directed to be kept in Jail Custody till 16th August 1974/23rd August, 1974. To establish the enormity of the absurdity of the complaint. Mr Dutt pointed out that even during the period as aforesaid, there was no complaint made by Mrs. Archana Guha about any torture being caused on her by the Police personnel or that, she was having the strength of her lower limbs diminished and such conduct of Mrs. Guha, according to Mr. Dutt was contrary to the provisions of Section 54, which deals with examination of arrested person by medical practitioner at the request of such person. Mr. Dutt claimed that if the story as now sought to be set up by Mrs. Guha, was correct then there was no bar and the law gave her the right to make an application u/s 54, but such steps were not taken by her and that fact alone, would be enough to establish the falsity of her claim.

55. Mr. Dutt then referred to the publications in press as made during the course of the proceedings and after the complaint was filed and claimed that those publications were so excessive that they would have created or have really created some problem and prejudice for Mr. Guha Neogi, to receive a fair trial and he further on a reference to the present provisions of the Code wanted to supplement that the intention of the legislature, to give an accused, opportunities to have a fair trial is there and according to him in a case of the

present nature, availability of such fair trial to an accused person is a must. He wanted to get sustenance to such submissions on a reference to West Bengal Criminal Law Amendment Act, 1988 by which after Section 245(1) of the Code, Sub-section (2) has been added by saying that nothing in this section be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. It was Mr. Dutt's further submissions that since the said amendment or the contents of the sections as a whole made beneficial provisions for an accused person, such beneficial provisions in a case of the present nature and when the same is pending unnecessarily or at the instance of Mrs. Guha for a long time, the proceedings as sought to be initiated, should have been quashed and which incidentally has been done by the learned trial Judge, having the authority. Mr. Dutt, of course, in his usual fairness pointed out that Section 167(5) of the Code makes provisions for stopping further initiation into a summons case or if such case is not concluded within a period of 6 months from the date on which the accused was arrested unless the officer making the investigation satisfied the Magistrate for special reasons and in the interest of the justice the continuation of the investigation beyond the period of 6 months was necessary, but there is no such provision in respect of the warrant case. But he submitted that even in a warrant case the provisions of Section 245 with the amendment as indicated earlier, which has established the actual legislative intent must be adhered to or it can be deduced for ends of justice that in a delayed case of the present nature the learned Magistrate even in a warrant case can discharge the proceedings or quash the same and as such also the learned trial Judge was justified in quashing the present proceedings on the facts as indicated earlier.

56. Mr. R.N. Bajoria, appearing for the Respondent No. 2, who was a constable at the relevant time and against whom allegations of torture or abetting the commission of the same was made, put forward his submissions on (1) the inherent improbability, (2) delay, and (3) fair trial, which were also advanced by Mr. Dutt, and claimed and contended that since in the facts and circumstances of the case, his client did not expect to get a fair trial and that too in view of the hostile atmosphere as created in view of the excessive publications and demonstrations, the interference by way of quashing the proceedings, even in a proceeding under Article 226 was possible and permissible and in making his determination, as he did, the learned trial Judge, did no wrong. He also submitted on the question of necessary speedy trial as a limb of fair trial.

57. Mr. Bajoria, barring his submissions as would be indicated hereafter, specifically adopted the submissions of Mr. Dutt.

58. While on his submissions on delay, Mr. Bajoria pointed out that since the alleged occurrences or happenings were in July, 1974 and the complaint itself was filed on 20th August, 1977, that fact would be enough to return a verdict, that the same was not bona fide and intended or aimed at doing great mischief

and to harass the Police officials concerned. He also made a specific reference to Section 54 of the Code of Criminal Procedure, 1973, which states that when a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice, and claimed that thus, there was no bar for Mrs. Guha to take shelter under or to have the aid of those provisions at the appropriate moment, if her grievances were genuine and her in action or non-action to avail of the necessary opportunity of the said section or the import and effect of the same, would go a long way to establish the allegations as made, to be baseless or groundless. He then also pointed out that on 30th September, 1974, Mrs. Guha was admittedly detained under MISA and challenged such proceedings in this Court and the said proceeding was dismissed on 21st May, 1975. It was claimed by Mr. Bajoria that Mrs. Guha was not illiterate and the facts as indicated above, would further establish that she was conscious of her rights and such being the position, the attempt to have the proceedings at such a late stage or the delayed initiation of the purported proceeding was not bona fide and as indicated earlier, the same was harassing too. He then submitted that the delay in this case should thus be counted and considered from the date of occurrence in 1974 and in fact from 1974 to 1977, there has been no explanation offered by Mrs. Guha or available before the Court. He contended further that the delay, if any, and if at all should be counted and considered in two lots i.e. (1) from 12th November, 1981 to 29th November, 1983 and (2) from 11th September, 1984 to 18th November, 1985 and in any event, his client, the constable concerned, who made one application and ultimately succeeded in the same and thus established that his claim was justified and that absurd, cannot be held responsible for causing any delay and as such, his case on the question of delay should be considered in isolation of Mr. Guha Neogi.

59. While on the point, Mr. Bajoria, referred to the application of his client dated 3rd August, 1987, for transfer of the proceedings before the learned Chief Judge, City Sessions Court, Calcutta, which was filed after some publications made in some local Newspapers and succeeded to some extent in that proceeding. That proceeding was challenged in this Court on 7th August, 1987, by Ajkal Publishers and they did not succeed before M. R. Malliek, J. and the said learned Judge, modified to some extent, the order of transfer as made.

60. Mr. Bajoria further contended that since there was no order of stay made or subsisting, there was no cause or ground of not proceeding with the proceeding by the learned Magistrate during the two periods as mentioned earlier.

61. On the ground of the effect of adverse publicity and excessive publication, Mr. Bajoria adopted the submissions of Mr. Dutt.

62. Mr. Mondal, appearing for the State, referred to the writ petition dated 22nd March, 1988 and also to the prayers of the same and claimed that the said petition was not a bona fide one, and was intended to frustrate the criminal proceedings as sought to be initiated. He further claimed and contended that the justification or otherwise of the delay from 1974 to 1977 or any delay as alleged, can only be gone into and considered at the trial and on proper evidence being adduced. He further claimed that the connected writ petition was neither bona fide nor maintainable, more particularly when, the writ petitioners were entitled to appropriate reliefs u/s 482 of the Criminal Procedure Code, 1973 and the learned trial Judge, should not have, in view of such availability of the other, adequate and appropriate reliefs under the Code, which by itself is a complete Code, made any interference.

63. An application was made by Peoples' Union for Civil Liberty for intervening in this proceeding. The said application was moved upon notice to all concerned and after hearing the same, we allow the intervention as asked for, Mr. Gopal Chandra Chakraborty, appearing for the said intervenors, submitted that on the basis of the pleadings and facts of this case, the issues involved should be firstly, can self created delay by any accused persons in his trial, be a ground for quashing the proceedings and secondly, could right and liberty of a helpless woman, victim of inhuman torture in Police custody by the Police officials be overshadowed by the consideration of delay in trial, mainly caused by the accused person, when they have been accused of torturing. It was claimed by him that injustice anywhere, is a great danger to justice, which affects any-one directly, would also affect the general public indirectly. Those submissions according to Mr. Chakraborty were based on the strength of declaration of human rights. He further claimed that the views of the Supreme Court in quashing criminal complaints as expressed, have been made in the process of proceedings before the Criminal Courts. He pointed out further that in this case such process/trial commenced and continued for sometime and the interference as made by Writ Court at such stage or any stage of the continuing criminal proceedings was not warranted and the same was bad. To supplement his submissions, Mr. Chakraborty referred to the case of Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, where the Supreme Court while considering Articles 21 and 22(2) of the Constitution of India has held and observed that there have been gross violation of right of an accused under those Articles and the Police though obtaining remand of arrested requisite period, apart from indicating that when a person comes to the Supreme Court with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases the Court has the jurisdiction to compensate the victim by awarding suitable monetary compensation and where a member of the

Legislative Assembly was arrested while en route to scat of Assembly and in consequence, the member was deprived of his constitutional rights to attend the Assembly Session and responsibility for arrest lay with higher echelons of the Government, it was a fit case for compensating the victim by awarding compensation. Compensation of Rupees 50,000/- was awarded.

64. It was submitted by Mr. Chakraborty that in the instant case the Police authorities were only intended to export confession from Mrs. Guha and as such, all their actions were intended to harass and torture her. It was then and specifically submitted by Mr. Chakraborty that a continuing criminal trial should not be allowed to be quashed by writ proceedings more particularly when in a case of the present nature evidence is being tendered. In support of his submissions Mr. Chakraborty firstly, referred to the case of *The Delhi Development Authority v. Smt. Lila D. Bhagat* (1975 Cri LJ 435) (SC) (supra), some particulars whereof, we have quoted earlier and where apart from that it has been observed that during the pendency of the prosecutions u/s 29(2) of the Delhi Development Act for violation of Section 14 of that Act some of the persons prosecuted filed writ petitions and criminal petitions challenging the validity of the prosecution. The High Court on interpretation of the Master Plan held that it had not specified any use of building as distinguished from land and allowed those petitions and in the facts of that case it has been held that it was a question of fact in each case whether the Master Plan had specified a particular use of a particular building and whether the person prosecuted had incurred the penal liability u/s 29(2) for the alleged violation of Section 14. The High Court instead of leaving that matter to be decided by the criminal Court unjustifiably and illegally, on the facts and in the circumstances of the cases, took upon itself the task of holding on interpretation of and on reading the Master Plan that it had not specified any use of building as distinguished from land. It was primarily and essentially within the domain of the criminal Court where the prosecutions were pending to arrive at its own conclusion on appreciation of the entire evidence placed before it. Then and secondly, reference was made by him to the case of *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, where the Supreme Court, the particulars whereof, we have quoted earlier, has indicated that where and when an order of the Magistrate issuing process against the accused can be quashed or set aside on the basis of the four contingencies proceedings.

65. It was then submitted by Mr. Chakraborty that in some cases delay in proceedings with the criminal case may be good ground for quashing the same but since the delay in the instant case has not been caused either due to or at the instance of Mrs. Guha, the interference on that ground by quashing the proceedings as made by the learned trial Judge was wrong and irregular. In fact, he submitted that if not the whole of it but the larger part of the delay in this case was caused by the writ petitioner/respondent and in support of such submissions Mr. Chakraborty referred to the tabulation as made by the learned Magistrate as to why and at whose instance the delay in prosecuting the

proceedings had occurred. He further submitted that delay, if any, caused by Mrs. Guha was not wilfully as she was interned under M IS A and in fact, during that period she filed the concerned complaint, (t was also indicated by Mr. Chakraborty that some delay perhaps was caused by Mrs. Guha since she could not over-come the shock which she received in jail custody meted on her and also on the members of her family which according to him, had also dehumanising effect on her mind. Mr. Chakraborty further submitted that such delay as caused in this case or the happenings thereof, was visualised by the Legislators, as such Section 468 of the Criminal Procedure Code, 1973 which is to the following effect:

Bar to taking cognizance after lapse of the period of limitation (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, has been incorporated. Then Mr. Chakraborty submitted that delay in this case cannot be a ground to defeat the purpose of the concerned proceedings and that too, on reference to Section 330, 348 and 509 of the Indian Penal Code which specifies the imposition of punishment for 7, 3 and 1 year respectively. Then Mr. Chakraborty submitted that when Section 348 prescribes 3 years punishment for wrongful confinement to extort confession or compel restoration of property, the three years delay in filing the complaint by Mrs. Guha in the facts and circumstances of the case, could not be treated or considered as such delay for which the learned trial Judge had directed quashing of the proceedings. Such delay in the facts and circumstances of the case, was claimed by Mr. Chakraborty could not be so fatal for which the proceedings should have been quashed.

66. It was also contended by Mr. Chakraborty that even on the basis of the principles as laid down by the Supreme Court in their celebrated decision including those which have already been cited at the Bar, the observations of the learned trial Judge were not justiciable and as such, he was not justified in having the proceedings quashed while sitting in the writ jurisdiction. It was contended that the learned trial Judge in fact, has considered irrelevant matters and documents which could only be established or contradicted at the trial and as such, it was Mr. Chakraborty's specific contentions that the learned trial Judge's observations were unwarranted and in fact, he has not really considered the effect of the incorporation of Section 468 as mentioned earlier.

67. Mr. Chakraborty contended further that the delay in having the proceeding disposed of occurred (a) on account of procedural delay, (b) the time taken by the writ petitioner-respondents, and (c) the time taken by Mrs. Guha. It was specific submission and that too on a reference to the observations made by the learned Magistrate that really, the writ petitioner respondent should be blamed and held responsible in wasting or consuming more time unnecessarily. It was also his submissions that delay alone cannot be the only criterion for quashing a proceeding of the present nature and on the facts of this case, such submissions were made by him on a reference to the case of V.K. Agarwal, Assistant Collector of Customs Vs. Vasantraj Bhagwanji Bhatia and Others, where the accused was prosecuted for an offence punishable u/s 111 read with Section 135 of the Customs Act, 1962. In that case one of the accused was convicted whereas other two accused were acquitted. The same alleged offenders were later on sought to be prosecuted u/s 84 of the Gold (Control) Act, 1968 relying on the find of primary gold from the very same premises at the time and on the occasion of the very same raid which gave rise to the prosecution under the Customs Act which had culminated in the conviction of one accused and the acquittal of two accused. The High Court found that the subsequent trial was barred by virtue of Section 403(1) of Criminal P.C., 1898, and it has been held that Section 403(1) would not come to rescue of the accused whereas Section 403(2) of the Code clearly concludes the matter against them and the accused could be found guilty of both the offences in the context of the possession of gold. If it was established that there was a prohibition against the import of gold and that he was found in possession of gold which he knew or had reason to believe was liable to confiscation he would be guilty of that offence. He would also be guilty of an offence under the Gold (Control) Act provided the gold is of a purity of at least 9 carats. He would have violated the provisions of "both" the Customs Act and the Gold (Control) Act if the aforesaid ingredients were established. It is not as if in case he was found guilty of an offence under the Customs Act, he could not have been found guilty under the Gold (Control) Act or vice versa. Upon being found guilty of both the offences the Court may perhaps impose a concurrent sentence in respect of both the offences but the Court has also the power to direct that the sentence shall run consecutively. There is therefore no question of framing of an alternative charge one, under the Customs Act, and the other, under the Gold (Control) Act. If the ingredients of both the offences are satisfied the same act of possession of the gold would constitute an offence both under the Customs Act as also under the Gold (Control) Act. Such being the position it cannot be said that they could have been tried on the same facts for an alternative charge in the context of Section 236, Cr.P.C. at the time of the former proceedings. Therefore it cannot be said that the persons who are sought to be tried in the subsequent proceedings could have been tried on the same facts at the former trial u/s 236, apart from indicating that the facts constituting the offence under Customs Act are different and are not sufficient to justify the conviction under the Gold (Control) Act. A separate charge could have been framed in respect of the distinct offence under Gold (Control) Act and that the fact that 20 years have

elapsed since the date of seizure of gold under Customs Act, 1962 and Gold (Control) Act, 1968 (November 15, 1968) would be no ground for not proceeding further with the matter inasmuch as the offence in question was a serious economic offence, which undermines the entire economy of the Nation. The delay occasioned in the working of the judicial system by the ever increasing workload cannot be the ground for justifying the delay.

68. Mr. Chakraborty also referred to Article 51A of Part-IVA of the Constitution relating to fundamental duties of every citizen of India and claimed that under such provisions, the woman folk should be duly honoured and respected, which was also enunciated by Manu and which is also recognised by Arts. 5 and 9 of the International Bill on Human Rights, which again, according to him, should be regarded and considered to be the basic structure for protection of human rights, specially for women, who have been made to suffer and receive such torture like Mrs. Guha, in the hands or at the behest of police officers like the respondent writ petitioner.

69. Both Mr. Chatterjee and Mr. Chakraborty claimed the impugned judgment to be perverse and illegal, as apart from the wrong application of the provisions of law and inappropriate application of the cases as cited at the Bar. The learned trial Judge, according to them, while making the determination took into consideration extraneous matters or facts, which have not as yet been received in evidence or such stage has not as yet reached. There cannot be any doubt or dispute that at this stage of the concerned proceedings, there is no evidence which could establish or justify the findings of the learned trial Judge that the case of Mrs. Guha is patently absurd and inherently improbable and as such the prosecution is nothing but a mala fide one even though the learned/trial Judge was right in his observations that the Court cannot be influenced merely by allegations made by Mrs. Guha and has to judge the issue and examine the case dispassionately without being influenced by any sentiment raised and expressed in the newspaper. The learned trial Judge was also right and justified in holding that our legal philosophy cannot alienate law from conscience and jurisprudence from justice and law and justice must coincide. He was also right on observing that any torture of an accused in the Police custody, particularly of a woman, gravely violates moral sentiment or moral standards of community and such a crime involves not only infringement of the moral sentiment of the community, but also shocks its conscience and no democratic or civilised Government should acquiesce to such crime committed by its own officer. It is also true that it is only when such crime is brought home by legal evidence, the question of punishment would come up for consideration. It is also true that until such time, the accused must be presumed to be innocent. It is further true that whenever there is a complaint made by an affected person, regarding torture in Police Custody as in this case, such complaint should be lodged for the purpose of ventilating the grievance at the earliest opportune moment, in respect of the nature and gravity of the torture as claimed to have been indicted. In the facts as discussed above, Mrs. Guha cannot be condemned for losing any time unreasonably, in having her

complaint filed on 20th August 1977, in respect of the torture inflicted on her in between 18th July, 1974 and 20th July, 1974. If the torture complained of appears to be true after necessary evidence, then that would not only be inhuman but barbarous, specially when, such torture, was inflicted by a Public Officer. On the basis of the available evidence and without any appropriate evidence being led and tendered, the learned trial Judge, in our view, was not justified to hold at this stage, that Mrs. Guha was guilty of such lapses as indicated above and while making his determination, as he did, the learned trial Judge failed to consider the effect and import of Section 468, Cr.P.C. or the Legislative intent behind the incorporation of the same. It is to be noted, on the basis of the pleadings as available at this stage and so also the records, it appears that in 1974 Mrs. Guha was put behind the bar and on 17th November, 1976, she was released on Parol and finally, was released on 3rd May, 1977 and by 3 months thereafter, on 20th August, 1977, she filed her complaint. As such, we feel that she really filed the complaint within 3 months of her release and that cannot certainly be and without any further evidence, considered to be an inordinate delay. There is also no evidence that Mrs Guha waited and wasted time to file her complaint for the Left Front Government to come to power, as alleged. This finding and the grounds to support and supplement the same, appear to us to be without any basis and legal evidence.

70. We have seen and considered the evidence of Dr. R.R. Sengupta, which establishes that Mrs. Guha was admitted to S.S.K.M. Hospital on 22nd December, 1975 and was discharged therefrom on 24th January, 1976 and really on becoming very weak, she was ultimately examined by the said Dr. Sengupta. The learned trial Judge has commented that when Mrs. Guha was released on Parole on 17th November, 1976 and she was released from her detention from 3rd May, 1977, she had the opportunity to lodge her complaint about the torture as alleged or which she had received, but she did not do so and that even while, she was in the hospital, she did not choose to make any complaint. The learned trial Judge has further commented while in Jail custody, Mrs. Guha could have also presented her complaint through the Superintendent of the concerned Jail, but that was not done and there has been, according to the learned trial Judge, no whisper made as to whether the weakness of Mrs. Guha was caused by any torture on her by the writ petitioner respondent and for which it became difficult for her to move. It is true that following or considering the judgment as cited at the Bar, the delay in a criminal case tends to cause serious prejudice to an accused, in conducting his defence, inasmuch as his witnesses may die or they may become otherwise unavailable or even they might forget the facts or documents may be lost or destroyed. In this case there was no such case made out by the writ petitioner respondent and as such, the observations of undue delay, which according to the learned trial Judge, has caused or led to prolonged suffering and oppression of the writ petitioner respondent, cannot in our view, be sustained. Such findings according to us, were also made by the learned trial Judge, not on consideration of the legal evidence as tendered, but to some

extent made on consideration of extraneous matters with which we are now dealing. The learned trial Judge was, in our view, wrong in making any interference in this proceeding and was also misguided and misdirected himself with the case of the present nature and holding that the Writ Court has the power or it can assess on the basis of the materials before the Court regarding the chances of an ultimate conviction. As indicated earlier, the evidence as received, is not as yet complete and it is expected that much more evidence would be forthcoming during the course of the proceedings and as such also, the interference as made by the learned trial Judge was not proper and he was also not right in holding ? that this Court in its jurisdiction in which the proceeding was decided could test or find out whether the prosecution as sought to be lodged, was a mala fide one or such prosecution was initiated for an oblique purpose or with such ulterior motive as hinted by him. In any event, at the stage of this proceeding, we feel that the learned trial Judge had no cogent evidence before him, to come to the conclusion that the prosecution as sought to be initiated, was a fake one or was expected to fail because of infirmities. It is also pertinent to record here that the learned trial Judge himself has observed that the application under Article 226 of the Constitution of India, which was being dealt with by him, was not made in the Criminal Revisional Jurisdiction, invoking the inherent power of the Court u/s 482 of the Criminal Procedure Code. Such being the position, we feel that the learned trial Judge was not right and justified in opining that the principles on which the High Court can quash a criminal case, while exercising its power u/s 482 of the Criminal Procedure Code, cannot be applied by the Writ Court. We feel that in the facts and circumstances of the case and more particularly when the evidence has not as yet been completed, the learned trial Judge was not justified in making such observations that in such criminal proceedings as involved in this case, a Writ Court, while trying to enforce the fundamental rights of a citizen as guaranteed under Article 21 of the Constitution of India, should not be fettered by the rules of technicality and has wide power to call for and look into documents that may be necessary for the purpose of exercising the jurisdiction under Article 226 of the Constitution of India. Such observations of the learned Judge, in our view, would make the criminal proceedings nugatory, specially in the facts and circumstances of the case and he was also not absolutely right in observing that there was no procedural fetter on the powers of the Writ Court, when the same exercises its jurisdiction, to protect a citizen from violation of his fundamental rights. If such protection is available to the writ petitioner respondent, in this case, we fail to understand why such protection to have a fair trial will not also equally apply in the case of Mrs. Guha. We further feel that on the basis of the evidence as available, the learned trial Judge was not right in holding that this Court under Article 226 of the Constitution can exercise such powers meaning thereby powers u/s 482 of the Criminal Procedure Code, for ends of justice and that too, in the special facts and circumstances of this case.

71. The learned trial Judge while making his determinations has also indicated

that the Writ Court may have to go into the question of patent absurdity and/or inherent improbability of the prosecution case in the light of the incontrovertible documents and other materials placed before him. There also, we feel that in the facts and circumstances of the case, the learned trial Judge was not right in returning such verdict, as up to the present stage of the proceedings or on the basis of the available evidence, such findings as made, cannot be said to be supported by any legal evidence. The fact that Mrs. Guha had or has some prima facie case, for having the prosecution initiated, was already considered by the Division Bench presided over by P.C. Barooah, J. (as his Lordship then was), in Criminal Revision Case No. 449 of 1979 and that being the position, it was not at this stage appropriate for the learned trial Judge, in view of the said Division Bench judgment to hold that there was no prima facie case. It is true that the respondent writ petitioner had also succeeded even before the said Division Bench to some extent, the particulars whereof, Mr. Dutt has indicated in his argument. But, even then, we are of the view that the learned trial Judge had no right or jurisdiction to hold at this stage of the proceedings and evidence, that there was or has been no prima facie case or the prosecution sought to be initiated was patently absurd or inherently improbable. It should be noted that the said Division Bench, while remanding the matter to the learned Magistrate, directed him to proceed with the trial in accordance with law and as such, there was no doubt that the Respondent writ petitioner would be at liberty to urge and raise all points as taken even before the said Division Bench or such other points as may be available to him at the appropriate stage, as observed by the said Division Bench and that being the position, we fail to understand how at this stage, the interference as made by the learned Trial Judge, can be sustained. The learned Trial Judge has observed that when a citizen approaches the Writ Court, for enforcement of the fundamental rights and one of his contentions is that on the basis of incontrovertible documents, the complaint is patently absurd and inherently improbable, the said Court would certainly be entitled to consider documents and record, if necessary, and is not required to confine to the records and documents already available in the proceedings which is sought to be quashed. Such observations of the learned Trial Judge appear to us to be improper in the facts and circumstances of the case and he was also not right in holding that the allegations of the complainant are falsified by the statement as available that she is now leading a normal conjugal life with perfect condition of health in a foreign country and the opinions as given by the expert have thus also been falsified. We fail to understand on the basis of what evidence, the learned Trial Judge had made such observations. We could not also follow the observations of the learned Trial Judge to the effect that as the Division Bench presided over by P.C. Barooah, J. (as His Lordship then was), in exercise of their powers considered the legality and propriety of the order of the learned Magistrate and they took into consideration some matters which were not on record before the learned Magistrate, we feel that even if the learned Trial Judge was right in holding so, he could not have held that in a writ application under Article 226 of the Constitution the Court will not be concerned with the legality

and propriety of the order of the learned Magistrate. The findings of the learned Trial Judge, which according to us, were without any proper evidence, have in our view, caused a grave miscarriage of justice as we have indicated earlier that at this stage, the learned Trial Judge had no jurisdiction to make any final determination on evidence. In any event, we feel that the learned Trial Judge was not right in accepting the case of the writ petitioner Respondent as sought to be made out in the writ petition that on the basis of certain contemporaneous documents and records, it would appear that the allegations as made, were patently absurd or inherently improbable. We hold that such stage has not as yet arrived on the basis of the available evidence. We further feel that the learned Trial Judge should not have observed and based his decisions on such observations that if the trial is allowed to be continued, the documents which are now annexed to the writ petition, will be brought on record without any difficulty, as most of them are public documents and are not disputed documents. It is true that some records have been disclosed, but there may be some other records, which may be tendered and brought into evidence during the course of trial, for the purposes of establishing the genuineness of the prosecution case. We feel that even on the basis of the observations as made by the learned Trial Judge himself that on the basis of the materials as available and taking into consideration, the infirmities in the prosecution as pointed out by him, it would be extremely doubtful as to whether the prosecution case will at all result in a conviction. By making such observations, with due respect, we find that the learned Trial Judge has just put the cart before the horse and he had no occasion to state at this stage that even if the prosecution is able to make out a case on the basis of the probability, that would not be sufficient to sustain a conviction, as there would still remain various evidence of doubt, of which the benefit must go to the accused. Unfortunately however, such areas of doubts have not been indicated by the learned Trial Judge himself. The above are, amongst others, some of the circumstances, the consideration whereof, emboldens us to say that the learned Trial Judge, while making his determination took into consideration extraneous matters or facts.

72. On the intrinsic evidence as available from the records of this proceeding, we are of the view that the tilt of the balance in the matter of taking adjournments and thereby causing delay, in having the concerned proceedings completed lay very heavily on the writ petitioner Respondent Shri Guha Neogi than either Mrs. Guha or the time consumed for transmission of the records after completion of each proceedings as initiated by the parties. There is no doubt that even though, before the Division Bench presided over by P.C. Barooah, J. (as His Lordship then was), the writ petitioner Respondent Shri Guha Neogi succeeded to some extent as indicated earlier and on the basis of the submissions as made by Mr. Dutt, but at the same time, it may not be doubted that frivolous objections were taken by the writ petitioner Respondent Shri Guha Neogi, in respect of the appearance of Mr. Chatterjee and that, to some extent frustrated and delayed the proceedings. When first of such attempt failed, there was no reason or occasion to take

recourse to such an attempt again in respect of the appearance of Mr. Chatterjee, which was ultimately repelled by Monoj Kumar Mukherjee,.). following the earlier determinations of Salil Kumar Dutt, J. (as His Lordship then was). In fact, such submissions did not hold good even before the Hon"ble Supreme Court of India.

73. It cannot also be doubted or disputed that on the basis of the erstwhile Division Bench judgment or on the basis of the claims therein, the trial of the warrant case, which was initiated on the basis of the complaint of Mrs. Archana Guha, should have been allowed to be proceeded with and should have been allowed to be completed. Such stoppage, we are of the firm view and opinion, has been caused by the machinations of the proceedings or steps as taken by the writ petitioner Respondent Mr. Guha Neogi, even though charges in the concerned Criminal case, have not as yet been framed and it appears without any doubt that at every stage and whenever the proceeding was going to be taken up for consideration, he took such steps, which prolonged and intended to frustrate the proceedings. We have indicated earlier about the tilt in obtaining adjournment or wasting time, lay on whom to a larger extent and we further feel, which has also been indicated earlier, that while making the determinations, the learned Trial Judge failed to consider and construe duly and properly, the provisions of Section 468 of the Code of Criminal Procedure, 1973 and in all fairness and more particularly when, complete evidence has not as yet been made available in the proceedings, the learned Trial Judge, in terms of the observations of the earlier Division Bench judgment, should have allowed the learned Magistrate to take further steps, in having the proceedings continued and completed. Such steps, admittedly could not be taken, for such action of the writ petitioner Respondent Mr. Guha Neogi as indicated earlier.

74. On the basis of the evidence as available and discussed by us, we are also of the firm view and opinion that the delay in having the concerned proceedings completed and to have a speedy trial, does not rest so heavily on Mrs. Guha, as it rested on the writ petitioner Respondent Mr. Guha Neogi and while considering such delay as occasioned, time consumed by the Court, in our view, should not be taken into consideration. However, if the writ petitioner Respondent Mr. Guha Neogi is allowed to take recourse to such submissions of delay as made on his behalf, for protecting his fundamental right, there we fail to understand why complainant Mrs. Guha would not be entitled to claim that on the basis of the allegations as made and that too, against the Police officer like the writ petitioner Respondent Mr. Guha Neogi, she should not have the appropriate opportunity and benefit to protect her rights as enshrined in the Constitution of India. If the submissions of the writ petitioner Respondent Mr. Guha Neogi are accepted, on the basis of the protection of his fundamental rights, then such right of Mrs. Guha cannot also be denied. There is no doubt that a speedy trial of a proceeding or to get speedy justice should be deemed to be a fundamental right, but the Court can certainly find out in exercise of its powers, as to who is responsible or more responsible in having such right frustrated. On the above aspect, we feel that our findings arc quite clear that the writ petitioner

Respondent Mr. Guha Neogi was more responsible than Mrs, Guha, in having the time of the Court wasted and thus to frustrate the trial of the proceedings.

75. On the basis of the determinations as cited at the Bar and testing them with the facts of the present case, we feel that in a proceeding under Article 226 of the Constitution of India or while deciding a case in the writ jurisdiction, the learned Trial Judge was not justified in having the Criminal proceedings quashed at the present stage, the more so when, further evidence may come or would be led by the parties. The concerned proceedings cannot at this stage and in our view, be declared to be a proceeding without any evidence and we feel, to conic to a prima facie findings that there is no evidence justifying the initiation of the Criminal proceedings, further and more evidence would be necessary to complete the concerned proceedings and that being the position, as stated by us earlier, the learned Trial Judge was not right and justified in making determinations as he did, at this stage. Speedy trial is not only a part of the fundamental rights to life but the same is also a further fundamental right to liberty. To arrive at such conclusion, something more than the evidence which has already been received in the record of the proceedings, is necessary and without such complete evidence, the learned Trial Judge had no power and jurisdiction to direct quashing of the Criminal Proceedings at this stage. We further hold that even on the determinations as made in the case of V.K. Agarwal v. Basant Bhabanji Bhatia (AIR 1988 SC 1106) (supra) and following the observations of the erstwhile Division Bench as referred lo hereinbefore, the allegations as made, are required lo be gone into and considered and as such, the learned Trial Judge, in the way and in the manner as he did, should not have got the proceedings frustrated. The determinations in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, agreeing with Mr. Chatterjee, we hold, would not apply in the facts and circumstances of the present case. We further find that the determinations in the case of State of Bihar v. Uma Shankar Ketrawal (1981 Cri LJ 159) (supra), will not also apply appropriately in the facts and circumstances of this case and would be dislinguishable on the facts of the present one and at this stage, the learned Trial Judge could not have come to a firm finding as to who was attributable or answerable for the delay caused in the present proceedings and that too, without having further legal evidence on the point. Even though Mr. Chatterjee, on the basis of the attending circumstances of the case sought to argue that it was only the writ petitioner Respondent Mr. Guha Neogi and none else, who was responsible for the delay and laches in the matter of having a speedy and fair trial, frustrated, we feel, on the basis of our findings, that at this stage, even we shall not be justified in making any final and firm determination of the point and our findings as above, are also to a great extent justify on the basis of the determinations in the case of R.P. Kapur v. State of Punjab (1960 Cri LJ 1239) (SC) (supra), the particulars whereof, we have quoted earlier and so also, on the basis of the observations made in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, . We firmly hold and reiterate that at this stage of the

proceedings, the learned Trial Judge was not appropriately justified to order the quashing as made and that too, in the facts and circumstance of the case. It can very well and reasonably be observed that even on the basis of the observations in *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, no case was really made out before the learned Trial Judge, on the basis whereof, it could be appropriately held at this stage that there was inherent improbability or absurdity in the proceedings as sought to be initialed and in any event, on the basis of the evidence as available, the learned Trial Judge was not justified in returning a verdict that the prosecution, as sought to be initialed, was patently absurd or inherently improbable. Such question, should have been left by the learned Trial Judge to be decided, hereafter or after receiving legal evidence in full. The case of *Kadra Pehadiya and Others Vs. State of Bihar*, which has pointed out that under trial prisoners cannot be kept in detention in prison indefinitely, to our mind is also distinguishable in the facts and circumstances of the present case and more particularly when, at this stage of the proceedings, the learned Trial Judge was not also justified in holding or concluding that there were no materials available for holding the writ petitioner Respondent Mr. Guha Neogi, guilty of the offences as alleged. The cases of *S. Guin and Others Vs. Grindlays Bank Ltd.*, and *Rakesh Saxena Vs. State*, are also distinguishable on the basis of our findings as recorded hereinbefore.

76. It should be noted that apart from other cases as cited hereinbefore, Mr. Dutt also relied on the case of *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, and we have indicated earlier, why the said determination is not applicable or is distinguishable in the facts of this case, Mr. Dutt referred to the case of *Thulia Kali Vs. The State of Tamil Nadu*, and *Balaram Roy Vs. The State*, We feel that even on the basis of such determinations, the learned Trial Judge, at this stage of the proceedings, was not justified in making the necessary interference. We also found and hold that the determination in *State of Maharashtra Vs. Champalal Punjabi Shah*, or the observations as made therein, would not apply at this stage, because the learned Trial Judge had not had at the present stage, the necessary materials to hold that it was Mrs. Guha, who was responsible for the delay in the matter or to have a fair and speedy trial, frustrated. While on the point and on the question of dehumanising factor of a prolonged delayed proceedings, Mr. Dutt referred to the case of *T.V. Valheaswaran v. State of Tamil Nadu (1983 Cri LJ 481) (SC) (supra)* and *Srinivas Gopal Vs. Union Territory of Arunachal Pradesh (Now State)*, apart from relying on the case of *The State Vs. Maksudan Singh and Others*, and *Rakesh Saxena Vs. State*, We have indicated the characteristic feature of those cases earlier and we further feel that the observations as made in those cases, would not apply with full vigour as claimed by Mr. Dutt, in a case of the present nature and more particularly when, the writ petitioner Respondent Mr. Guha Neogi is a Police officer. Similar is our view in respect of the determination in the case of *State of Bihar Vs. Uma Shankar Ketriwal and Others*, We also feel that the submissions of Mr. Dutt, creating some adversity in the trial because of some publications made

in newspapers, cannot be accepted as it is not expected that the mind of the dealing Court will be clouded or influenced by such publications.

77. We further feel and observe that not at this stage, but at the appropriate stage after completion and reception of legal evidence fully and finally, this Court, if occasion so arises, would be entitled to interfere under its inherent powers under the Code of Criminal Procedure, if so advised, for quashing the trial. Even if we apply the tests as indicated in the case of *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, and which was cited by Mr. Dutt, we feel that at this stage, the interference as made by the learned Trial Judge, was improper. While on the court's power to interfere, further reference was made by Mr. Dutt to the case of *The Delhi Development Authority, New Delhi v. Smt. Lila D. Bhagat* (1975 Cri LJ 435) (SC) (supra). But even on consideration of the observations as made therein and so also on the basis of the observations as made in the case of *Superintendent and Remembrancer of Legal Affairs, W.B. v. Mohan Singh* (1975 Cri LJ 812) (SC) (supra), we feel that the stage at which the learned Trial Judge has directed quashing the proceedings, was not proper. We also feel that at this stage, we will not also be justified in coming to a firm and definite conclusion that the case as sought to be made out on the basis of the allegations of Mrs. Guha, were improbable or absurd and such decision should be left to be made after receipt of the full and final legal evidence and that being the position, the learned Trial Judge was not justified in making the interference, as he did.

78. The above observations of ours do also deal with and dispose of the submissions as made by Mr. Bajoria, as he more or less adopted the submissions of Mr. Dutt. We have indicated earlier the submissions as made by Mr. Chakraborty appearing for the Intervenors and our views on them.

79. On the basis of our over all findings as indicated earlier, we feel that the quashing of the proceedings at this stage as directed by the learned Trial Judge and more particularly when, the entire and complete legal evidence has not as yet been received in the proceedings, was not justified, this appeal, therefore should succeed and the trial of the concerned Criminal proceedings, should be directed to commence at once, in terms of the earlier Division Bench determination, which was presided over by P.C. Barooah, J. (as His Lordship then was).

80. This appeal thus succeeds. But in the facts and circumstances of the case, we make no order as to costs.

81. In view of the long delay, which has occurred, in having the proceedings completed, we direct the learned Registrar, Appellate Side to transmit the records of the concerned proceedings, if they are in this Court, to the learned Trial Magistrate at once, with a request to have the proceedings as initiated, completed after taking due and legal evidence at an early date. It would be highly appreciated, if necessary steps for complying with this order are taken

within two months from today and thereafter, if the proceeding, is completed by six months.

82. Before leaving the matter we must keep it on record that an affidavit dated 18th September 1989, was filed by Mrs. Guha and the allegations as made therein, have been disputed by the writ petitioner Mr. Guha Neogi by his affidavit dated 28th November 1989. We have just referred to these affidavits and are not making any determination on them, as we feel that such determination is not necessary at this stage.

83. Prayer for stay is refused.

S.K. Guin, J.

84. I agree.