

(1985) 08 PAT CK 0002

In the Patna High Court

Case No : Government Appeal No. 52 of 1976 with Criminal Appeal No. 323 of 1976

State

APPELLANT

Vs

Maksudan Singh and 16 Ors., Raghubansh Singh,
Bishwanand Singh and Mohan Pd. Singh
 Harendra
Singh @ Harendra Singh Pradhan Vs The State

RESPONDENT

Date of Decision : 15-08-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 302

Citation : (1985) PLJR 946

Hon'ble Judges : S.A. Sandhawalia, C.J.;S.S. Hasan, J;P.S. Sahay, J

Bench : Full Bench

Advocate : R.B. Mahto, A.G., S.K.P. Sinha and Mahesh Pd., J.C. to A.G., Prakash Narayan Pandey, Kaushalendra Kr. Singh and Lata Kailash Behari Pd. in Government Appeal No. 52 of 1976 and Rash Behari Singh, B.P. Pandey and A.K. Singh "Chauhan" in Criminal Appeal Nos. 323, 333 and 371 of 1976, for the Appellant; R.B. Mahto, (A.G.), S.K.P. Sinha and Mahesh Pd., (J.C. to A.G.), Prakash Narayan Pandey, Kaushalendra Kr. Singh and Lata Kailash Behari Pd. in Criminal Appeal Nos. 323, 333 and 371 of 1976 and Rash Behari Singh, B.P. Pandey and A.K. Singh "Chauhan" Government Appeal No. 52 of 1976, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—Is the constitutional right of the accused to a speedy and public trial in all criminal prosecutions now flowing from Article 21 of our Constitution, by virtue of presidential mandate, identical in content with the express constitutional guarantee inserted by the Sixth Amendment in the American Constitution, What is the inevitable legal consequence if the accused persons is denied this constitutional rights? Would American precedents on the Sixth Amendment attracted and applicable in this context in India as well? Would inordinately long and callous delays in concluding a criminal trial on a capital charge by the prosecution be per se prejudicial to the accused? These are the

significant questions which have come to the fore in this reference to the Full Bench. Primarily in issue is a frontal challenge to the reasoning and ratio of the Division Bench judgment in *State of Bihar Vs. Ramdaras Ahir and Others*, . For the determination of the pristinely legal issues aforesaid, it is unnecessary to delve deeply into the facts at this stage. Suffice it to mention that the State of Bihar has brought the Government Appeal against twenty respondents who were all brought to trial on the capital charge of murder, conspiracy, unlawful assembly and other allied and minor offences. The alleged occurrence admittedly took place more than 14 years ago on the 26th April, 1971. After a protracted investigation and trial extending beyond 5 years, the learned Additional Sessions Judge, Chapra, rendered an exhaustive judgment running into 120 typed pages on the 31st of August, 1976. Thereby eight of the accused persons were given the benefit of doubt and were acquitted of all charges. Further, Rabindra Singh, respondent, who was held guilty on the substantive charge of murder u/s 302 I.P.C. was sentenced to rigorous imprisonment for life. The remaining eleven accused persons who were charged for vicarious liability for murder were found guilty of causing simple hurts and rioting, etc only and sentenced to various terms of imprisonment and fine. As noticed above, the State of Bihar brought the Government Appeal u/s 378 of the Code of Criminal Procedure, 1973 against the acquittal of the accused respondents, which was dismissed in limine qua *Raghubansh Singh Bishwanand Singh, Mohan Prasad Singh*, and admitted as regards others way back on 1st of December, 1976. However, this appeal as also the appeals, preferred by the accused persons against their conviction did not reach a hearing till eight years thereafter in month of September, 1984.

2. Before the Division Bench, Mr. Rash Behari Singh, the learned counsel appearing on behalf of the respondents, took up a preliminary objection that the Government Appeal against acquittal qua some of the accused respondents was not maintainable in view of the Division Bench judgment in *Ramdaras Ahir's* case (supra) because of the grave delay of more than 14 years from the date of occurrence on the 26th of April, 1971. However, learned counsel for the appellant State challenged the correctness of the ratio in *Ramdaras Ahir's* case, and in view of the importance of the issue the Division Bench issued notice to the Advocate-General as well. On behalf of the appellant reliance was placed on *State of Maharashtra Vs. Champalal Punjaji Shah, Sher Singh and Others Vs. State of Punjab*, and *A.K. Roy and Others Vs. Union of India (UOI) and Others*, : *A.K. Roy and Others Vs. Union of India (UOI) and Others*, In view of the significant constitutional and legal issues involved, the Division Bench has referred the case to a larger Bench for an authoritative adjudication.

3. Ere I come to grips with the individual issues requiring adjudication, it is apt to clear the decks for the background against which these have now to be examined. As appears from the above, the basic issue herein is the challenge to the ratio in *Ramdaras Ahir's* case and the necessary corollaries thereto. It becomes necessary therefore to examine what precisely has been laid down in the said judgment and within what limitations. This cannot be better done than

by noticing the under mentioned words of the Division Bench itself.

Before parting with this judgment, even at the risk of some repetition, it seems necessary to point out, for clarity of precedent, that the aforesaid discussion must not be viewed as any general dissertation on the reversal of any and every acquittal. It is patently in the context of a capital charge for which the Legislature provides either the sentence of death or of life imprisonment only in the alternative. It is only against the backdrop of a challenge or reversal of a clean acquittal on a capital charge (i.e., not merely a State appeal against acquittal on a major charge), which involves the onerous setting aside of a double presumption of innocence, which runs like golden thread throughout the web of our criminal jurisprudence. As elaborated earlier, it is in the mosaic of statutory appeals provided against acquittal which renders the proceedings nothing but a continuation or prolongation of a trial on a charge of an offence punishable with death. What has been said in the earlier part of this judgment is confirmed to the parameters of the aforesaid conditions. Equally, in the context of time limit which may be imposed, the same must operate within the qualifications laid down by the final Court in Sher Singh's case (supra). The delay must not be occasioned due to the absconding or the default of the accused, nor must it run against the reasonable form of time generally occupied in the default of the accused, nor must it run against the litigative process and also must take note of the nature and the gravity of the crime.

At the very outset I may notice that we were invited temptingly to enter the thicket of hypothetical cases and to examine the issue of delay generically in all cases including those of trivial and technical offences. However, I would stoutly refuse to be drawn into any web of fantasy and confine myself strictly to the terra firma of what squarely calls for adjudication. As noticed earlier, Ramdaras Ahir's case was decided within the narrow parameters drawn by the Bench itself and when a challenge is made to its correctness, I would confine myself to the same limitations. As a matter of sound judicial restraint and policy, the focus of the Full Bench herein would remain on the issues directly involved (including constitutional) and not on any academic ones. This seems to be both sound on principle as also mandated by recent precedent in A.K. Roy's case (supra).

All the same, the position is firmly established in the field of constitutional adjudication that the Court will decide no more than needs to be decided in" any particular case. "Abstract questions present interesting challenge, but it is for scholars and text-book writers to unravel their mystique. It is not for the Courts to decide questions which are but of academic importance.

In the light of the above, I would constrict myself within the narrow parameters within which the issues arise, namely, the reversal of a clean acquittal on a capital charge (punishable with a sentence of death or life imprisonment in the alternative only) and the consequent dislodging of a double presumption of innocence after an unexplained, callous and inordinate delay of more than 10 years.

4. Since the whole debate herein has centred on the foundational base of the ratio of Ramdaras Ahir's case, the discussion hereinafter is inevitably rested on what has been held in that case without wastefully repeating the same. In a way the judgment in Ramdaras Ahir's case must be deemed as an integral part of the present one, nevertheless it becomes necessary to notice the salient holdings arrived at therein. It has been held--

(i) That now by presidential mandate the basic human right to speedy trial has been expressly written as if with pen and ink into the constitutional right relating to the right of life and liberty guaranteed by Article 21 of our Constitution.

(ii) That the constitutional right of speedy trial envisages an equally expeditious conclusion of a substantive appeal and not merely a technical completion of the proceeding in the original court alone.

(iii) That a grave, inordinate delay in reversing an acquittal on a capital charge, though not identical, is yet in a way akin to similar delay in the execution of a capital sentence.

(iv) that a horrendous delay, extending beyond a decade in a criminal trial (including a substantive appeal) on a capital charge, involving the reversal of a double presumption of innocence, would violate the constitutional guarantee of a fair, just and reasonable procedure, and, equally infract the fundamental right to a speedy trial vested in an accused under Article 21.

(v) that American decisions on the Sixth Amendment to the American Constitution with regard to accused's right to speedy and public trial would now have a direct bearing under Article 21 of our Constitution.

(vi) that once a constitutional guarantee to speedy trial and the right to a fair, just and reasonable procedure has been violated, then the accused is entitled to unconditional release and the charges against him would fall to the ground:

(vii) that a callous and inordinately prolonged delay of 10 years or more, which, in no way arises from the accused's default (or is otherwise not occasioned due to any extraordinary and exceptional reasons), in the context of the reversal of a clean acquittal on a capital charge, would plainly violate the constitutional guarantee of a speedy trial under Article 21.

5. Mr. Pandey, the learned counsel for the appellant, State of Bihar, assailed the foundational premise of Ramdaras Ahir's case, namely, that the accused's right to speedy and public trial flowing from Article 21 of our Constitution is identical in import with the expressly guaranteed constitutional right in the Sixth Amendment of the American constitution. The ingenious submission made was that even though the right of speedy and public trial may now be deemed to be implicit in Article 21 by virtue of the precedents of the final court, yet such a right in India was lesser in content and effect from what it would be in America, where it was a part of the constitution in express terms. It was submitted that the language of the Sixth Amendment to the American Constitution was

conspicuous by its absence in Article 21 and has been adopted only by way of an analogy by precedent. On this hypothesis it was argued that such a right in India rests on a pedestal much lower than that under the American Constitution.

6. Though one must compliment the learned counsel for the appellant for his ingenuity, it seems plain to me that within this jurisdiction no such submission can be easily countenanced, both because of the doctrine of precedent and equally because of the express mandate of Article 141. In view of the discussion in paragraphs 9 to 14 of the judgment in Ramdaras Ahir's case, it seems somewhat unnecessary to launch afresh on a dissertation upon the enlarged and expanded concept of Article 21 by virtue of the recent precedents of the final court. This in a way epitomises what Lord Tennyson had said a century ago.

Where freedom slowly broadens down from precedent to precedent.

7. The question now is whether the enlarged and broadened concept of Article 21 would include within its wide sweep the renowned right to speedy and public trial which, indeed, is a basic human right as well. Undoubtedly, an expeditious trial is the very soul and essence of criminal justice and there can be no manner of doubt that notorious delays in such trials, if occasioned entirely by the default of the prosecution, would by themselves constitute a denial of justice. It is in recognition of this fundamental principle that way back in 1790, the Sixth Amendment to the United States Constitution had provided as follows:--

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

Though it is literally true that the aforesaid words have not been specifically enumerated in terms in our Article 21, yet it is now well settled that the identical right is implicit in the broad sweep and content of Article 21 as authoritatively interpreted by the Supreme Court. Therefore, for our purpose, it "is necessary to examine this on principle because it seems to me as settled beyond cavil by binding precedents. In Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, which was yet one of the series of cases from our own State arising from the notorious and heart rending delays in the context of under-trials Bhagwati, J. has categorically held as follows:--

Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice.

It is interesting to note that in the United States, speedy trial is one of the

constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that--

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

So also Article 3 of the European Convention on Human Rights provides that,

"every one arrested or detained-shall be entitled to trial within a reasonable time or to release pending trial."

We think that even 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 this court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously 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 or 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.

In the succeeding case of the series *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, it was again reiterated as under:

Speedy trial is, as held by us in our earlier Judgment dated 26th February, 1979, an essential ingredient of "reasonable, fair and just procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial of the accused.

The aforesaid view was reiterated by Chinnappa Reddy, J. speaking for the Court in *State of Maharashtra Vs. Champalal Punjaji Shah*, Yet again in *T.V. Vatheeswaran Vs. State of Tamil Nadu*, it was observed as follows:--

The fiat of Article 21, as explained 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 a 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. That is as

far as we have gone so far.

In the light of the aforesaid long line of unbroken precedents of the final court itself, it is not possible for one to hold that even though it has been declared now in categorical terms that the right of speedy and public trial is as much a constitutional right in India under Article 21 as it is in America under the Sixth Amendment to the Constitution, yet here its content or effect would be in a way different or lesser. That no qualification or pre-condition has been laid out by their Lordships of the Supreme Court whilst unreservedly importing the Sixth Amendment within the sweep of Article 21 seems manifest. On the doctrine of binding precedent, therefore, it must be held that the basic human right of speedy trial is virtually written with pen and ink into the constitutional right relating to the right to life and liberty guaranteed by our Article 21.

8. Even if any doubt remains in this context, it would stand dispelled by Article 141 of our Constitution which says that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. In a way so far as the judgments of the Supreme Court are concerned, constitutional sanction is given to their binding nature. To my mind, the judgments referred to above have declared in uncompromisingly categorical terms that the right to speedy and public trial is a constitutional guarantee under Article 21 and, therefore, the weight and content of that right cannot be whittled down or debased. In this context it is well to remind oneself of the succinct observation of Viscount Cave, Lord Chancellor in the House of Lord's decision in (1927) AC 827 (Jones, appellant and South West Lancashire Coal Owners' Association Limited, respondents):--

My Lords, when a question of law has been clearly decided by this House, it is undesirable that the decision should be weakened or frittered away by fine distinctions,

Therefore, the contention that we must in a way read down the right of speedy and public trial in India and consequently put it at a lower pedestal because it is not written in so many words in our Constitution as it is in the Sixth Amendment of the American Constitution, must be rejected.

9. To conclude on this aspect, the answer to the question posed at the very outset is rendered in the affirmative and it is held that the constitutional right of the accused to a speedy and public trial in all criminal prosecutions now flowing from Article 21 of the Constitution by virtue of presidential mandate is identical in content with the express constitutional guarantee inserted by the Sixth Amendment in the American Constitution.

10. The learned Advocate-General, Mr. Ram Balak Mahto, with his usual lucidity had confined himself to lay challenge to only two of the propositions in Ramdaras Ahir's case. With regard to what would be the inevitable legal consequences of the infraction of the constitutional right to speedy and public trial, he took the stand that these consequences pertain to the realm of sentence alone, and not to

total dismissal of the charge or the vacation of the sentence imposed. Herein the learned Advocate General highlighted the fact that the right of the accused to a speedy and public trial was counter-balanced by the obligation of the State to expeditiously try serious offenders and, bring them to book. Herein he emphasised that a balance must be maintained betwixt the right of the accused, on the one hand, and the State's duty, on the other. The golden mean, according, to Mr. Mahto, was that even the grossest delays involve in effect the question of sentence alone, and not that of conviction. This submission was equally espoused by Mr. Pandey on behalf of the appellant State.

11. The aforesaid submission must necessarily break down on a closer analysis, both for logical reasons as also on the ground of weighty persuasive precedents. It is plain that the right of speedy and public trial does not arise or depend on the conviction and sentence of the accused. Barring exceptions (where it may be invoked even after conviction), such right indeed arises normally before any conviction or sentence is recorded. 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 form has, therefore, to be categorically rejected. 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 infringed. 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 benefit in the imposition of sentence be given for violating the right which has been declared as both a human right and constitutional one. Plainly enough, therefore, the ingenuous argument of merely compensating the constitutional right of speedy and public trial by some leniency on the point of sentence must logically break down.

12. In India, there appears to be an acute and, indeed total paucity of precedents on the point of legal consequences that must flow in the wake of violation of the constitutional guarantee of speedy and public trial. The question was pointedly raised in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, but was not answered in terms. However, the possibility of the accused being entitled to be released unconditionally from the charge levelled against him was distinctly visualised and seems to have been implicitly recognised. However, the issue has been the subject matter of consideration in the American Courts, and as would be shown later, these precedents on the Sixth Amendment would be applicable and attracted to the situation. The question in a way (though not frontally) came to be considered by the United States Supreme Court in Willie Mac Barker vs. John W. Wingo (33 L. Ed 2d. 101) itself. However, the later authoritative enunciation of the United States Supreme Court in Clarence Eugene Sterunk vs. United States (37 L. Ed. 2d. 56) concluded the

matter in the following terms:

The Government's reliance on *Barker* to support the remedy fashioned by Court of Appeals is further undermined when we examine the Court's opinion in that case as a whole.. It is true that *Barker* described dismissal of an indictment for denial of a speedy trial as an "unsatisfactorily severe remedy". Indeed, in practice, "it means that a defendant who may be guilty of a serious crime will go agog, without having been tried". 407 US at 522, 33 L. Ed. 2d. 101. But such severe remedies are not unique in the application of a constitutional standards. In light of the policies which underlie the right to a speedy trial, dismissal must remain, as *Barker* notice, the only possible remedy. *Ibid*.

13. To summarise on this aspect, the appellant State's stand that the violation of the right of speedy and public trial pertain to the realm of sentence alone must be rejected, both on principle and precedent. It must be held that once the constitutional guarantee of speedy trial and the right to a fair, just and reasonable procedure under Article 21 has been violated, than the accused is entitled to an unconditional release and the charges levelled against him would fail to the ground.

14. Inevitably, an allied issue which pointedly arises is whether the American precedents on the Sixth Amendment would now be attracted in the context of this aspect under Article 21. It was sought to be contended somewhat half-heartedly on behalf of the appellant State that it would be impermissible to draw any aid from the mass of American precedents on the Sixth Amendment of their Constitution. This submission, in my view, is indeed wholly untenable. Having held as above that the constitutional right of the accused to speedy and 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 on this fact of Article 21. Indeed no meaningful argument could be urged on behalf of the appellant as to why the judgments of the supreme court of America would not be attracted as persuasive precedent, once the foundational bases of the Sixth Amendment and Article 21 have been hold to be identical in content.

15. This matter may well be examined from another refreshing angle as well. 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. Way back in *State of U.P. Vs. Deoman Upadhyaya*, , the Constitution Bench observed as follows at page--1131;

Article 14 of the Constitution of India is adopted from the last clause of S. 1 of the 14th Amendment of the Constitution of the United States of America and it may reasonably be assumed that our Constituent Assembly when it enshrined

the guarantee of equal protection of the law in our Constitution, was aware of its content delimited by judicial interpretation in the United States of America.

In considering the authorities of the superior courts in the United States, we would not therefore be incorporating principles foreign to our Constitution, or be proceeding upon the slippery ground of apparent similarity of expressions or concepts in an alien jurisprudence developed by a society whose approach to similar problem on account of historical or other reasons differ from ours.

J.C. Shah, J. speaking for the majority after sanctifying reliance on the American precedents, proceeded to cite and quote with approval three decisions of the United States Supreme Court in that context. Even Subba Rao, J. in his dissenting judgment equally, placed reliance on the American precedents on the 14th Amendment for interpreting Article 14. Earlier Chief Justice Das in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, had culled out the rule of construction of the equality clause in the context of the principles of classification from the various decisions of the Supreme Court of the United States of America. Much water has flown down the bridges since the aforesaid decisions and consistently therewith in innumerable cases American precedent under the equal protection clause has not only been repeatedly referred to approvingly, but have been a sound source for interpretation of Article 14. In the recent Division Bench judgment of this court in C.W.J.C. No. 337 of 1985 (R) (*Kishan Maheshwari v. The State of Bihar and others*) decided on 16th May, 1985, it has been held after an exhaustive discussion that American precedents on the right of franchise and equal protection clause of the 14th Amendment would be directly attracted to the identical situation by virtue of article 14.

16. Now 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. It must, therefore, be held that American precedents on the Sixth Amendment of their Constitution would be equally attracted and applicable as persuasive precedent on this fact of Article 21 of our Constitution in India.

17. Mr. Pandey, the learned counsel for the appellant State, then took up the stand that the delay, however prolonged it may be, and even in the context of a capital charge would not by itself amount to prejudice to the accused. According to him, the accused must specifically allege and establish as to what other prejudice was caused to him or to the conduct of his defence apart from the fact that the horrendous spectacle of a death penalty or imprisonment for life had hung over his head for 10 years or more. For this submission, a somewhat pedantic reliance was sought to be placed on an isolated line torn from its context in *Champalal Punjaji Shah's* case (*supra*). It was submitted that their lordships had observed in passing that a delayed trial is not necessarily an unfair trial and the delay may have caused no prejudice to the accused.

18. Learned counsel's some what specious reliance on a passing observation

dehors its context has only to be noticed and rejected. One must recall the rule in *Quinn v. Leathern* (1901 AC 495) that what is relevant in a judgment is the ratio of the case and what it actually decides and not every passing observation therein or what may logically flow therefrom. Equally relevant is the reiteration of this view by their lordships in *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, holding that it is idle to build upon a sentence or a line in a judgment. That *Champalal Punjaji Shah's* case is plainly distinguishable in the context in which the matter is being examined here is indeed manifest. The charge in the said case far from being a capital one was indeed for a somewhat minor economic offence punishable under the Customs Act for possession of smuggled gold. The trial was not inordinately delayed in its peculiar context, and on appeal the accused was acquitted by the High Court. It was in the state Appeal against the said acquittal before their lordships of the Supreme Court that the plea of a delayed trial was raised as a matter of last resort. But the hall mark of the case was that their lordships came to a categoric conclusion that the delay had been occasioned entirely by the accused himself. Indeed, it was observed at the very outset of the judgment as under:

It is one of the sad and distressing features of our criminal justice system that an accused person, resolutely minded to delay the day of reckoning, may quite conveniently and comfortably do so, if he can but afford the cost, involved, by journeying back and forth, between the court of first instance and the superior courts at frequent interlocutory stage. Applications abound to quash investigations, complaints and charges on all unimaginable grounds depending on the ingenuity of client and counsel.

and concluded in this case by holding that "the accused himself was responsible for a fair part of the delay.

It is apt to recall that in *Ramdaras Ahir's* case it was specifically held that where the delay is occasioned by the accused's own conduct, he can derive no benefit therefrom. whatsoever on the hallowed principle that no one can take advantage of his own wrong. *Champalal Punjaji Shah's* case is thus distinguishable and on this point is only authority for the proposition that in cases other than those on a capital charge a delay occasioned by the accused's own conduct or obstructive tactics cannot avail any benefit to him.

19. Indeed I am of the view that *Champalal Punjaji Shah's* case far from in any way aiding the appellant is of frontal assistance to the view canvassed on behalf of the accused respondents. In the context of the delay caused by the prosecution, their lordships have forthrightly observed as under:

We are not unmindful of the delays caused by the tardiness and tactics of the prosecuting agencies. We know of the trials which are over delayed because of the indifference and somnolence or the deliberate inactivity of the prosecuting agencies. Poverty struck, dumb accused persons, too feeble to protest, languish in prisons for months and years on and awaiting trial because of the insensibility

of the prosecuting agencies Again, an accused person may be seriously jeopardised in the conduct of his defence with the passage of time. Witnesses for the defence may become unavailable and their memories too may fade like those of the witnesses for the prosecution. In such situations, in appropriate cases, we may readily infer an infringement of the right to life and liberty guaranteed by Article 21 of the Constitution. Denial of speedy trial may with or without proof of something more Lead to an inevitable inference of prejudice and denial of justice. It is prejudice to a man to be detained without trial. It is prejudice to a man to be denied a fair trial. A fair trial implies a speedy trial.

It is plain from the above that their lordships have in no uncertain terms observed that it is prejudice to be denied a speedy trial with or without proof of something more. It has rightly been held that in such cases the court must readily infer an infringement of the right to life and liberty guaranteed by Article 21 of the Constitution. It appears to me that Champalal Punjaji Shah's case would drive the last nail in the coffin of the theory that such delays would not be prejudicial.

20(a). Perhaps, this aspect can be well demonstrated by moving from the abstract to the concrete and considering the case of respondent No. 20, professor Phulena prasad singh. At the material time of occurrence, way back April, 1971, he was a respected member of the academe and was the head of the Department of History in his institution. He was accused of the charge of mere conspiracy levelled against him. He was suspended from the post with all the ignominy attaching thereto. He laboured under the shadow of death and destitution for more than five years till he was acquitted on the 31 August, 1976. However, his deliverance seemed to be short lived and the State appeal against his acquittal was admitted. By an application dated 6th of December, 1976 he applied to the Vice Chancellor, Bihar University, for withdrawal of his suspension order and for being allowed to join his post However, this prayer was categorically rejected and he was not permitted to join his post because of the pendency of the Government appeal. This appeal, however, hung over him like the sword of Democle, for another eight years. He was deprived of the chance of becoming the principal of his college and to rise further in his profession which was his life time ambition. During the pendency of the Government appeal he retired from service and even after retirement, he was denied payment of his provident fund, gratuity and other pensionary benefits on the ground that as yet the (Government appeal against his acquittal was, pending disposal. In our social conditions and family bonds, his sons and daughters were denied the place of life which was their due and lost good options of marital status because of the horror of a capital charge pending against this respondent and the occasioned by (sic) the withholding of all financial benefits to him. Mr. Rash Bihari Singh, his learned counsel, rightly highlighted that the loss and prejudice to this respondent is perhaps irretrievable and he is but a broken man and a mere shadow of him-self, irrespective of the fact whether today his acquittal is curtailed or otherwise.

20(b). In the light of the aforesaid discussion, it must, therefore, be held that inordinately prolonged and callous delay of ten years or more occasioned entirely by the prosecutions default, in the context of reversal of cleaned acquittal on a capital charge, would be per se prejudicial to the accused.

20. Lastly, one must in fairness notice the submission of the learned counsel for the appellant State in assailing the ratio in Ramdaras Ahir's case, on what he chose to label as discrimination. At the very outset it may be stated that these submissions seem to stem from misapprehension of the true import and ratio in the said case. Mr. Pandey at first contended that it was not possible to presidentially lay down the time limit of ten years and this would be discriminatory qua cases where prejudice has been caused even in the context, of delay of less than the said period.

21. In rebutting this argument Mr. Rash Bihari Singh, the learned counsel for the respondents submitted that indeed it was the court's duty to draw the outer line somewhere and he forcefully urged before us that indeed in Ramdaras Ahir's case, the line had been drawn somewhat harshly at an inordinately long period of ten years. Counsel forcefully contended that in criminal cases perhaps two years should be the outer limit.

22. To appreciate the rival stand, it is apt to recall that in Ramdaras Ahir's case, the Division Bench noticed that it was not an easy task to presidentially lay down a somewhat inflexible rule about the precise quantum of delay which would entitle the accused for the invocation of the constitutional right and thereafter, proceeded to consider the matter in depth in Paras 36 to 45. As regards the quantum of ten years so fixed, it was observed:--

Indeed I am somewhat hesitant in spelling out the aforesaid time limit, which perhaps errs on the side of strictitude. However, considering the fact that here in one seems to be breaking new ground, I would wish to rest content with the same.

23. In view of the above, Ramdaras Ahir's case must not be misunderstood or misconstrued to mean that a delay of less than ten years would not in any case amount to prejudice. Indeed what it lays down is the extreme outer limit of time, whereafter grave prejudice to the accused must be presumed and the infraction of the constitutional right would be plainly established. It does not even remotely lays down that in a lesser period than ten years an accused person would not be able to show the circumstances pointing to the patent prejudice which may entitle the invocation of Article 21. That is a question which can be properly considered and adjudicated wherein it directly arises. Both in Ramdaras Ahir's case and the present one, the delay is admittedly far beyond the outer limit of ten years.

24. A somewhat similar argument was then raised on behalf of the appellant State that Ramdaras Ahir's case was applicable only to capital cases and the reversal of acquittal therein and thus drew a discriminatory line between other

cases which were either not capital in nature or did not involve any acquittal. Herein again the contention seems to arise from a somewhat superficial appreciation of the ratio in Ramdaras Ahir's case. As has been observed earlier in the adjudication of constitutional questions, it is always inapt to travel beyond the actuality of the case. Since the issue in Ramdaras Ahir's case had arisen only in the context of a capital charge and the reversal of an acquittal thereon, the examination and the adjudication of the question was confined to a case of that nature. From that it does not follow that--some part of its rationale or the ratio itself would not be equally attracted in cases other than those on a capital charge or ones not directly involving the reversal of an acquittal. However, these are issues which can only be justifiably examined when they properly arise in a case and cannot be pronounced upon in an academic vacuum. On this aspect, we would, therefore, re-affirm the reasoning and the ratio in Ramdaras Ahir's case with the clarifications aforementioned.

25. To finally conclude, it is held--

(i) that the constitutional right of the accused to a speedy and public trial in all criminal prosecutions now flowing from Article 21 of the Constitution by virtue of presidential mandate is identical in content with the express constitutional guarantee inserted by the Sixth Amendment in the American Constitution";

(ii) that once the Constitutional guarantee of a speedy trial and the right to a fair, just and reasonable procedure under Article 21 have been violated then the accused is entitled to an unconditional release and the charges levelled against him would fall to the ground;

(iii) that the American precedents on the Sixth Amendment of their Constitution would be equally attracted and applicable as persuasive on this facet of Article 21 of our Constitution as well;

(iv) that inordinately prolonged and callous delays of 10 years or more entirely because of the prosecution's default in the context of the reversal of a clean acquittal on a capital charge would be per se prejudicial to the accused; and

(v) that the ratio and the reasoning of Ramdaras Ahir's case is hereby affirmed.

26. These appeals would now go back to the Division Bench for a decision on merits in the light of the above.

P.S. Sahay, J.

I had the advantage of going through the judgment of the Hon'ble the Chief Justice but I regret to say that I cannot subscribe to the views expressed by his Lordship. These cases were placed for final hearing before a Bench of which I was also a member, and a preliminary objection was raised by the learned counsel appearing on behalf of the respondents in the Government Appeal that the appeal is being taken up after more than 10 years of the date of occurrence and in view of the decision in the case of State versus Ramdaras Ahir (supra) the

appeal has abated against the respondents as they were all charged u/s 302 of the Indian Penal Code which is punishable with death or imprisonment for life. Learned counsel for the State, however, doubted the correctness of the aforesaid decision and raised two contentions.

(1) Even in cases relating to capital punishment no time limit can be fixed and the period of ten years was wholly arbitrary and without any basis.

(2) In cases of lesser offence the Government Appeal will not be barred even after the expiry of the period of ten years, which will be highly discriminatory and violative of Article 14 of the Constitution of India.

In view of the importance of the points decided and its implication on criminal cases and trials, we were of the opinion, that the decision referred to above requires reconsideration and, therefore, we referred it to a larger Bench.

27. So far as the second point is concerned, it has been observed by the Hon^{ble} the Chief Justice that it does not require consideration in the instant case and can be taken note of, if and when occasion arises, meaning thereby that when an appeal against acquittal in cases relating to lesser offence will be taken up for hearing by this Court. But when Article 21 and 141 of the Constitution of India and other relevant provisions are being considered in detail, then, in my opinion, Article 14 cannot be lost sight of, and as stated earlier this decision will have far reaching consequences in criminal trials and also after the stage of appeal and revision. However, I will not dilate on this point and shall confine myself to the first point only for the present.

28. Now, after so many judicial pronouncements of the Supreme Court, details of which have been given and discussed in great detail by the Hon^{ble} the Chief Justice, there is no doubt that speedy trial is integral and essential part of fundamental right to life and liberty, as enshrined in Article 21 of the Constitution of India which runs as follows:--

No person shall be deprived of his life or personal liberty except according to the procedures established by law.

We are aware that there is always some delay in the disposal of the cases, for one reason or the other, due to which the accused persons have to be in jail for a number of years in cases relating to serious offences, this causing great harassment to them. In some cases they are also acquitted for which there is no provision to compensate them. Therefore, in cases of delayed trial what will be the consequence, this has not been answered till today, though raised, before the Supreme Court. Courts are fully alive to this problem and there is always a hue and cry for speedy disposal of cases pending in different courts starting right from the lower courts to the highest court. It is often said that due to long delay, people in general and litigants in particular, are losing faith in the manner the courts are functioning and the procedure. The lawmakers are also fully conscious of this problem and still no steps have been taken to fix any time-limit for the

disposal of any type of criminal cases. In the Code of Criminal Procedure, 1973 there are some provisions, in which time-limit has been prescribed and I may refer to sections 167 and 468 of the Code of Criminal Procedure, which give certain benefit to the accused persons. In that situation, will it be proper for this Court to fix any time-limit even in cases relating to appeal against acquittal involving capital punishment? In any opinion, the answer must be in the negative. The provision of the American Constitution has been discussed in great detail by the Hon''ble the Chief Justice, and the 6th amendment to the United States Constitution runs as follows:--

In all criminal prosecutions the accused shall enjoy the right to speedy and public trial.

There is no such provision in our Constitution as it has been rightly observed by the Hon''ble the Chief Justice. Therefore, what consequence will follow in cases where trial has been delayed. The delay in our country is due to various factors including the failure on the part of the State in not providing with adequate number of Judges or Magistrates, buildings, court-rooms, non-production of witnesses and other factors connected with the disposal of cases. These problems may be completely absent in American countries and, therefore, the law-makers have made amendment in the American Constitution giving benefit to the accused persons in cases of delayed trial. Therefore, in my opinion, it will not be proper to follow the American Constitution and their decisions while deciding our cases when we have self-contained Code laying down complete procedure. Moreover, a law which is codified cannot be equated with certain observations here and there of the Supreme Court, when the point has been kept open and has not been answered. In some of the decisions of the Supreme Court, we find, cognizance taken has been held to be good, but on account of long delay the Supreme Court has declined to interfere even if the proceeding had wrongly been quashed. In some cases legal infirmities have been found in course of trial, convictions have been set aside and no re-trial has been ordered, in some cases death sentence has not been awarded and in some lenient view has been taken while awarding the sentence due to the long and protracted trial, not due to the fault of the accused. These cases have been decided on the facts and circumstances of each case and there is absolutely no discussion for fixing any time-limit.

29. While construing our own Constitution different High Courts of this country have deprecated the practice to take the aid and help from the Constitution of other countries and I may refer to some of the decisions and they are L K. Barman versus State of Bihar (I.L.R. 29 Pat page 502), Md. Jia versus State of U.P. (A.I.R. 1943 All 345), and Sri Mahadeb Jiew and Another Vs. Dr. B.B. Sen, . In the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, reliance was placed on some of the provisions of American Constitution and also on American decisions and it has been held as follows:-

It is only proper that we must evolve our own solution to problems arising under

our Constitution without, of course, spurning the learning and wisdom of our counterparts in comparable jurisdictions

About the American decisions their lord-ships' observations may be usefully quoted:

For reasons which we have stated more than once during the course of the judgment, the discussions of the U.S. Supreme Court which turn peculiarly on the due process clause in the American Constitution cannot be applied whole sale for resolving questions which arise under our Constitution, especially when, after a full discussion of that clause in the Constituent Assembly, the proposal to incorporate it in Article 21 was rejected. In U.S.A. itself, Judges have expressed views on the scope of that clause, which are not only divergent but diametrically opposite. For example, in *Goldberg* (1970) 20 L. Ed. 2d. 287) on which Sri Jethmalani has placed considerably reliance, Black, J., said in his dissenting opinion that "the majority was using the judicial power for legislative purposes and that, they wander out of their field of vested powers and transgress into the area constitutionally assigned to the Congress and the people. The dissenting opinion of Chief Justice Burger in that case is reported in *Mao Wheeler v. John Montgomery*, (1970) 25 L. Ed. 2d. 307, 311, in the same volume. Describing the majority opinion as, unwise and precipitous the learned Chief Justice said:

The Courts action today seems another manifestation of the now familiar constitutionalising syndrome; once some presumed law is observed, the Court then eagerly accepts the invitation to find a constitutionally "rooted" remedy. If no provision is explicit on the point, it is then seen as "implicit" or commanded by the vague and nebulous concept or "fairness".

30. While construing the provisions of our own statute a note of warning has been given by the Supreme Court in the following terms:

It is the part of judicial prudence to decide an issue arising under a specific statute by confining the focus to that statutory compass as far as possible. Diffusion into wider jurisprudential areas is fraught with unwitting conflict or confusion *Western India Match Co. Ltd. Vs. Deputy Collector, Cess, Bettiah and Others*,

Therefore, in my opinion, while deciding a case of such a far reaching consequence we should better confine ourselves to the four corners of our own Constitution and the law relating to the procedure to be followed in deciding criminal cases. Article 21 of the Constitution of India extracted above only lays stress on "procedure established by law and even after acquittal by the trial court appeals are admitted and if it is not disposed of according to the procedure laid down, then, in my opinion, there will be a clear violation of the procedure established by law". In that view of the matter, fixing of 10 years will be contrary to the provisions of the Constitution as well as the Code of Criminal Procedure.

31. Mr. Rash Bihari Singh, learned counsel appearing on behalf of the

respondents in the Government Appeal has submitted that even delay of two years should be sufficient to give benefit to accused person. This submission, according to me, is wholly ridiculous when we all know that even revision and quashing applications are not disposed of within that period. Another submission of Mr. Singh that prejudice has been caused to one of the respondents and this has been discussed in great detail by the Hon''ble the Chief Justice. This is also equally without any substance. There is another aspect of the matter which cannot be lost sight of. The Court has to take into consideration not only the question of harassment to the accused but also has to consider the other side of the picture, about the family and relations who have suffered. If culprits go scot-free due to delay in disposal of cases which may not be due to their own fault, then it will not be proper to exonerate them and that will be disposal of the case no doubt, but not justice in the eyes of law. The question of delay and harassment can be taken into consideration at the time of awarding sentence and there is specific provision to hear the parties before pronouncing the judgment on the question of sentence and the Court will take into consideration all relevant facts which will be placed both by the prosecution and the defence.

32. For the reasons given above, I am unable to agree to the reasonings and conclusions arrived at by the Hon''ble the Chief Justice and no time-limit can be fixed even in cases relating to the offences punishable with death. The Government Appeal will, therefore, not abate. Let all the appeals be placed before a Division Bench for final hearing, including the Government Appeal, which will proceed against all the respondents, to be decided on merits, in accordance with law.

S. Shamsul Hasan, J.

I may state straightway that I agree entirely with the reasonings and the conclusions of the Hon''ble the Chief Justice and disagree with deepest deference with the conclusions of Hon''ble P.S. Sahay, J. I venture, however, to express my own feelings on the matter in issue also.

33. Speedy trial of a person facing prosecution on any charge and more so on a capital charge is the inherent right of such a person. The entire scheme of the Code of Criminal Procedure and its amendment is patently striving to achieve this. To dilute this situation on the basis of legalistic, and constitutional alibi would be a concept alien to the modern and progressive criminal jurisprudence. This inherent right has now been strengthened by presidential support of the Supreme Court of India which has imported the concept of American Constitution as spelt out in the Sixth Amendment to that Constitution and in view of Article 141 of our Constitution it must now be treated as a law of the land. Even agreeing with Hon''ble P.S. Sahay, J. to the extent that we must confine ourselves to our own Constitution, a question emerges that, has not the American concept, as embodied in the Sixth Amendment, become a part of our Constitution also. In my view, as held by Hon''ble the Chief Justice, reiterating the decision of the Supreme Court it certainly has and now it devolves upon the

court of law from, the initial to "the ultimate stage to ensure that this aspect is treated as a golden thread in the web enmeshing the criminal procedure.

34. I also agree with Hon"ble Chief Justice that the American decisions relevant to the matter in issue can now be looked into and, in my view, certainly as a work of scholarship as we would examine a text book in order to apply the principles embodied in them to our situations.

35. Coming to the question of the period of ten years, as has been fixed by Hon"ble the Chief Justice in his judgment, I am inclined to agree with the submission of Mr. Rash Bihari Singh that it should have been fixed at two years. I do not agree with Hon"ble P.S. Sahay, J. that the conditions prevailing in this country and Courts render this suggestion of two years ridiculous. The situation in Court cannot tend to deprive an affected person of his valuable and constitutional right of getting his prosecution speedily disposed of nor can the constitutional mandate be diluted by exigencies of the situation caused by the absence of an adequate infra-structure at the instance of the State for speedy disposal. If necessary infra-structure is not provided, the person facing criminal prosecution should not be made the victim of the situation and the State is alone to be blamed for it. It is well-known that time limit has been fixed in various situations particularly when capital punishment is involved, in commuting them. Even the Supreme Court has in many cases commuted death sentences after two years and in some because of the attitude of the appellant accused five years was not sufficient. Frankly speaking much lesser period should have been fixed but that would not have received the approbation of those who are oblivious of the hardship caused and the mental agony inflicted by the delay to a person who may ultimately be acquitted of all charges. The submission of the Advocate General that delay should only be taken into consideration for inflicting lesser punishment is only to be stated to be rejected. This submission forgets that no lesser sentence than imprisonment for life can be imposed if a person is convicted on a capital charge. His submission, therefore, only means this that if a person is sentenced to death, that sentence can be reduced to imprisonment for life. For such commutation 2 or 3 years has been found to be enough in a lot of cases and in any event when capital sentence is inflicted the likelihood of its delayed disposal is very rare. In most cases, therefore, we are concerned with the persons sentenced with the imprisonment for life or likely to be sentenced to death or imprisonment for life if an appeal by the State succeeds. Can it be said that after 10-15 years if a person is found guilty of capital charge in a Government Appeal, than because of the delay instead of imposing death sentence imprisonment for life is inflicted, thus mitigating the delay in disposal of the case. In my view, "no" because at that stage life imprisonment may amount to be inflicting a punishment which would be far harsher than death sentence because the accused would be passing through a "living death". Due process of law does not mean that the process itself becomes punitive before a penalty is inflicted. Due process is synonymous with the process being exhaustive with greatest of speed.

36. As regards application of the aforesaid principle to the trial for lesser offences Hon^{ble} the Chief Justice has rightly not entered into any discussion in this appeal. I may however, add that if a situation arises, then within the ambit of those sections the principle of speedy trial can certainly be applicable but that will be for some other occasion.

37. I am also not inclined to agree with submission of the State that it is the duty of the Courts to keep in mind the rights of the citizens and the victims and their families against acts of crime committed by individuals while dealing with criminal appeals and trials and even if they are delayed, that is not a justifiable ground for interfering. The concept embodied in the submission is erroneous, more so in a Government appeal. When the respondent has been found to be innocent in a proper trial, he can no longer be treated as a person who in any way poses a danger to the welfare of the society in general. This submission ignores the duty of the State-Appellant entirely in relation to criminal prosecution. On the commission of a criminal offence the person concerned is taken into custody on his name transpiring in the F.I.R. or on suspicion of having committed the offence on the subjective satisfaction of the Police or other agency of the State. It is erroneous immediately to assume that the man arrested is guilty and is danger to the welfare society at large and is the person who has to give his pound of flesh to satisfy the spirit of vendatta of the victim's family and relations. He will be deemed to be innocent at that stage. It will then be the duty of the agency of the State and they alone to ensure that not only the right man is sent up for trial but wrong person is not so done. When this situation is crystallised on the basis of the evidence recorded by the Police and if a trial has to proceed it is again the prosecution and the prosecution alone which has to produce evidence in Court as early and as speedily as possible to ensure that either the guilty is punished, thus serving the cause of the society in general and the victim, or his family, as the cases may be, in particular, or to ensure that the future of an innocent person does not hang in balance of uncertainty regarding his complicity or involvement in the crime. His name should be cleared as early as possible. In this situation the Courts are helpless and remain entirely in the hands of the State prosecutor. If witnesses are not produced, if the Investigating Officers do not appear; if the doctors fail to turn up, then it may well be asked-who is protecting whose interest? Is the interest of the society in general protected by allowing the accused or a couple of accused to be subjected to protracted trial and in most cases languish in jail for years? The answer is "no". A situation like this deserves the highest reprobation. The submission of the State is not only surprising but unrealistic because it is invariably the agency of the State which causes delay in disposal of trials and the benefit of delayed disposal thus must flow to the accused in such, a situation. The Hon^{ble} the Chief Justice has clearly distinguished the delay caused by the accused from those that are caused by other circumstances beyond control of Courts or created by the accused and in the former it has been held that the accused is not entitled to any benefit. It is well known that the prosecution witnesses are kept back at the

instance of the Informant to harass the accused particularly when he is in jail. State owes its duty both to the society and the victim's family on the one hand and the accused, on the other. It is, therefore, the duty of the State to see that the guilty is punished as quickly as possible and the innocent is declared so as speedily as possible. Similar will be the situation in Government Appeal and appeal" against conviction. The disposal of the Govt. Appeal or appeal against conviction has been delayed merely because the State has failed to provide necessary infrastructure for ensuring speedy preparation and an early hearing of such cases--respondent or appellant being the mute sufferer of this delay.

38. I may also state that notoriety of a particular incident should be of no consequence to a Court trying to indicted of that occurrence. What is important is the value of the evidence brought on the record and if that is not brought speedily, then the traversity of justice will be patent and Writ large.

39. This situation must be kept in mind by Courts at all levels-whether it be at the trial stage or at the appellate stage. In the past death sentence had been commuted on the ground of delay in culmination of the proceeding upto the appellate stage. It is time now that appellants are also granted bail if the hearing of the appeals is delayed by 2 years or if an appellant has languished in jail for a considerable period of time prior to appeal. This is the dictum of the Supreme Court and is well recognised form of relief against protracted delay in hearing the appeal while the appellant is languishing in jail running the sentence detrimentally affected which cannot be reversed if an acquittal takes place.

40. While parting I may add that a day may come and that too sooner than later that. the period of less than ten years also will be treated as unjustified delay and it will be brought down to two years. It will be only then that the interest of justice will be served. I also hope that Courts everywhere and at all levels will be conscious of the right of the indicted person to get speedy disposal of his indictment and consequently the hardship that delay beyond the control of the accused causes. In the result, I adopt the direction given by Hon"ble the Chief Justice.