Before V.S. Aggarwal, J

STATE,—*Petitioner*

versus

P.C. AGGARWAL,—*Respondent*

Crl. R. 89 of 1991

27th May, 1997

Constitution of India, 1950-Art. 21-Speedy trial—Delay—Whether the accused entitled to benefit.

Held that, indeed speedy trial enshrined under Article 21 of the Constitution is a fundamental right. But we may ask a question as speedy mean how speedy? In this regard nature of the offence, the number of accused, the tactics adopted, the work load of the court and all co-related factors cannot be lost sight of. The non-availability of the witnesses and at times the members of the bar being not available and on certain occasions Presiding Officer on leave also add to the delay. Delays are inherent in the trials that take place. A huge amount is alleged to have swindle and certain serious economic offences purported to have been committed. To give benefit of delay would be improper. Each case is to be decided on facts. No hard and fast rule can be laid.

(Para 21)

Code of Criminal Procedure, 1973—Ss. 203, 204, 397, 462 and 465—Order summoning the accused—Order is interlocutory—Revision against such order is not competent—Revisional Court had no territorial jurisdiction—Order passed by Revisional Court—Such order is irregular—Irregularity curable.

Held, that an order issuing process on *ex parte* consideration of the complaint and material under section 204 Cr. P.C. is only a step towards the trial and is an interlocutory order. Revision petition against the order summoning the respondents was not competent.

The court has basically to see the assertions that are made in the complaint. If there is any other unimpeachable material, the same can be taken into consideration.

(Paras 12 and 14)

Further held, that it cannot be said that an Additional Sessions Judge had no inherent jurisdiction to hear the revision petitions. At best he could only be described to be not having

territorial jurisdiction to do so. When the Court of Sessions did not have the territorial jurisdiction and he heard the revision petitons it would be acurable irregularity, rather than an illegality which may occur when the Court does not have the inherent jurisdiction. Sections 462 and 465 Cr. P.C. would come to the rescue of the respondents in this regard.

(Para 9)

R.K. Handa, Advocate, *for the Petitioner*

H.L. Sibal, Sr. Advocate and R.S. Cheema, Sr. Advocate with Mrs. Reeta Kohli, Advocate, D.P. Singh, Advocate, Alok Jain, Advocate, *for the Respondent.*

JUDGMENT

V.S. Aggarwal, J.

(1) By this common judgment both the Criminal Revisions Nos. 89 and 90 of 1991 can conveniently be dispose of together.

(2) The relevant facts are that Deputy Chief Controller of Imports and Exports had filed a criminal complaint against the respondent and others for offences punishable under sections 420/468/471 and 120-B IPC besides Section 5 of the Imports and Exports Control Act, 1947. Since the facts are not much in controversy in both the petitions, they can well be delineated.

(3) M/s Impex Services is stated to be a partnership concern. P.N. Piplani, M.M. Piplani, C.L. Piplani and Smt. Jaya Piplani were the partners. Ravinder Kumar was the peon of Shri P.C. Aggarwal. P.N. Piplani gave a general power of attorney in the name of Ravi Kumar. In fact the said Ravinder Kumar had signed as Ravi Kumar on the direction of P.C. Aggarwal, An application was sent to the Secretary, Apparel Export Promotion Council, Sahyog Building, Nehru Place, New Delhi for membership of the organisation under the signatures of Ravi Kumar. Parkash Chand was the proposer of the application. It was seconded by Mahavir Parshad. Both Parkash Chand and Mahavir Parshad were the employees of P.C. Aggarwal, Membership was issued in favour of M/s Impex Services under the signatures of Shri K.C. Mathur. Thereafter an application dated 25th December, 1983 was addressed to the office of Deputy Chief of Controller of Imports and Exports, Amritsar under the signatures of Ravi Kumar. It was accompanied by an export order

of M/s Jyo Tax Inc Canada with respect to Hoisery garments worth 1,90,000 pieces. The case was considered in the Advance Licence Section for import of polyster filament yarn. It was decided that 11,90,000 pieces of 100% polyster Hosiery Garments shall be exported subject to the condition that export obligation was 6 months from the date of clearance of first instalement. One Ram Parshad accused gave the undertaking that he will manufacture the said pieces of Polyster Hosiery garments. Thereupon Ravi Kumar accused informed that the office had been shifted to Rani Ka Bagh Shopping Complex, Amritsar. The Advance Import licence alongwith the duty exemption entitlement Certificate was issued to the Impex Services. It was stipulated that goods shall be exported within six months from the date of clearance of first consignment. A letter was addressed to the office of Deputy Chief Controller of Imports and Exports by Ravi Kumar for enhancing CIF value in their advance licence due to devaluation of the rupee. An amended licence was issued. It is alleged that the licence was handed over to Shri P.C. Aggarwal and SSI certificate had been issued which was also given to Shri P.C. Aggarwal.

(4) On receipt of the licence Shri P.N. Piplani appointed Ram Parshad of M/s Excel Corporation for importing polyster yarn. Ram Parshad was residing at the residence of P.C. Aggarwal. Huge amounts were deposited and withdrawn from the accounts in the name of Ram Parshad. The details of such accounts have been given in the complaint which are not relevant to be mentioned for disposal of the present revision petitions. By doing all this, in criminal conspiracy with each other, the accused persons is alleged to have caused the loss of Rs. 1,99,15,818 to the Government. As per conditions of the licence the finished goods had to be exported within six months from the date of the clearance of the first instalment. M/s Jyo Inc is alleged to be a fictitious firm. The export order is also stated to be bogus.

(5) On these broad facts, the complaint was filed. The learned Special Judicial Magistrate summoned the respondent and other accused for the offences mentioned above on 28th February, 1989.

(6) Aggrieved by the same, the respondent preferred the revision petitions. The learned Additional Sessions Judge (Special Judge), Patiala heard the revision petitions and,—*vide* separate orders discharged Parkash Chand as well as P.C. Aggarwal. The Additional Sessions Judge/Special Judge, CBI held that there was nothing in the complaint that P.C. Aggarwal had any conspiracy

with any of the accused. As per the complaint made no offence can be drawn against them and, therefore, the order summoning the respondents P.C. Aggarwal and Parkash Chand was set aside. Aggrieved by the same the present revision petitions have been filed.

(7) At the outset learned counsel for the petitioner-C.B.I./ Chief Controller of Imports and Exports contended that the order passed by the learned Additional Sessions Judge/Special Judge, C.B.I., Patiala is without jurisdiction. According to him the accused have been summoned by the learned Judicial Magistrate, Jalandhar. Therefore, the Additional Sessions Judge at Patiala had no jurisdiction to hear the revision petitions. He had drawn the attention of this Court to the notification issued dated 24th October, 1989, by virtue of which Shri R.D. Single who was an Additional District and Sessions Judge was appointed the Presiding Officer of the Special Court at Patiala. The said notification reads:—

> "No. 1/58/89-Judl/1222 Spl. In exercise of the powers conferred by Section 3 read with the provisions contained in sub-section (2) and section 4 of the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988) the President of India is pleased to appoint Shri R.D. Single, Additional District and Sessions Judge, Patiala, Presiding Officer of the Special Judge Court, set up,—*vide* Government of Punjab, Department of Home Affairs and Justice Memo. No. 1/26/80-3Judl/ 6218—21 dated the 23rd February, 1988, as a Special Judge for whole of the State of Punjab for the trial of offences specified in sub-section (1) of section 3 of the aforesaid Act committed within the State of Punjab and investigated by the Delhi Special Police Establishment (Central Bureau of Investigation, Government of India).
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> S.L. KAPUR,
> Financial Commissioner and
> Secretary to Government of Punjab,
> Department of Home Affairs and Justice."

on the strength of the same it had been urged that Shri R.D. Single could only hear cases for the State of Punjab with respect to offences punishable under the Prevention of Corruption Act, 1978 and investigated by the Delhi Police Establishment. It was contended further that the revision petition against the order passed by the

Judicial Magistrate was maintainable with the Court of Sessions and Shri R.D. Single at Patiala could not hear the revision petition against the order passed by the Judicial Magistrate at Jalandhar.

(8) In this regard reference can well be made to the letter of the High Court dated 16th September, 1989 addressed to the District and Sessions Judges, Jalandhar and Patiala. It reads:—

> "I am directed by the Hon'ble Chief Justice and Judges to refer you on the above subject and to request you to kindly transfer the cases investigated by the Special Police Establishment from the Courts of First Additional District and Sessions Judges, Jalandhar and Patiala and S/Shri J.P. Mehmi and Nardhir Inder Singh, Special Judicial Magistrate Ist Class, Jalandhar and Patiala respectively to the Courts of Shri R.D. Single, Additional District and Sessions Judge, Patiala who has been appointed as Special Judge and Shri Harinder Pal Singh Mehal, Judicial Magistrate Ist Class, Barnala appointed as Special Judicial Magistrate, at Patiala for the trial of cases investigated by the C.B.I. exclusively."

Perusal of the same shows that on the administrative side, this court had directed the transfer of cases investigated by Special Police Establishment from the Court of Additional District and Sessions Judges, Jalandhar and Patiala to the Court of Shri R.D. Single, Additional District and Sessions Judge, patiala. This would certainly include all the cases that were investigated by the Special Police Establishment. This would even include the revisions that were pending at Jalandhar. It is obviously on basis of this letter that the revision petitions which were pending with the Court of Sessions at Jalandhar were transferred to the Court of Shri R.D. Single, Additional District and Sessions Judge, Patiala.

(9) Be that as it may, otherwise also since Shri R.D. Single was an Additional Sessions Judge, it cannot be held that he had no inherent jurisdiction to hear the revision petitions. At best he could only be described to be not having territorial jurisdiction to do so. When the Court of Sessions did not have the territorial jurisdiction and he heard the revision petitions it would be a curable irregularity, rather than an illegality which may occur when the Court does not have the inherent jurisdiction. Sections 462 and 465 of the Code of Criminal Procedure, 1974 would come to the rescue of the respondents in this regard. Reference to some of the

precedents on the subject would clinch the issue against the petitioners. In the case *Ram Chandra Prasad* v. *State of Bihar* (1), a similar question cropped up under the earlier Code of Criminal Procedure, 1898. Rejecting the contention that the Court did not have the territorial jurisdiction and, therefore, the proceedings would be void, the Court in paragraph 8 held:—

> "In view of S. 531 of the Code of Criminal Procedure, the order of the Special Judge, Patna, is not to be set aside on the ground of his having no territorial jurisdiction to try this case, when no failure of justice has actually taken place. It is contended for the appellant that S. 531 of the Code of Criminal Procedure is not applicable to this case in view of sub-section (1) of S. 7 and S. 10 of the Criminal Law Amendment Act. We do not agree. The former provision simply lays down that such offences shall be triable by Special Judges and this provision has not been offended against. Section 10 simply provides that the cases triable by a Special Judge under S. 7 and pending before a Magistrate immediately before the commencement of the Act shall be forwarded for trial to the Special Judge having jurisdiction over such cases. There is nothing in this section which leads to the non-application of S. 531 of the Criminal Procedure Code."

Same view prevailed in the subsequent decision of the Supreme Court in the case of *Nasiruddin Khan* v. *State of Bihar*(2), and the Court while rejecting a similar plea held:—

> "There being no allegation of failure of justice on account of trial having been conducted in Patna this object was held to be unmeritorious. Before us nothing new has been urged. Our attention has not been drawn to any provision of the Code which would show that some other Court had exclusive jurisdiction to try this offence. Once, therefore, we repel the appellant's contention that desertion in the State of Jammu and Kashmir did not constitute an offence and hold that the appellant by deserting in Jammu and Kashmir State was liable to be tried and convicted if found guilty of th offence of desertion as contemplated by the Act which is a

(1) A.I.R. 1961 SC 1629
(2) A.I.R. 1973 SC 186

> continuing offence, then, in the absence of any provision showing that under some law some other Court has exclusive jurisdiction to try him it cannot be said that his trial in the Patna Court is without jurisdiction, particularly, when his desertion continued."

No different was the view taken in the case *Smt. Raj Kumari Vijh* v. *Dev Raj Vijh,* (3) and the Supreme Court held:—

> "So where a Magistrate has the "power" to try a particular application under Section 488, and the controversy relates solely to his territorial jurisdiction, there should, ordinarily, be no reason why Section 531 of the Code should not be applicable to the order made by him. It has therefore to be examined whether there were any such circumstances in this case for which the High Court could justifiably refuse to apply the provisions of Section 531."

Perusal of these precedents clearly show that even if the Court of Additional Sessions Judge at Patiala did not have the territorial jurisdiction, still the order cannot be termed to be illegal. But as noted above, the cases had been transferred on administrative ground and, therefore, the revision petitions have rightly been sent from the court at Jalandhar to the Court of Additional Sessions Judge at Patiala. On this count, there is no merit in the submission made by the petitioners' learned counsel.

(10) On behalf of the petitioners, it was again urged that in any case the respondents could only approach the Judicial Magistrate for recalling the order and could not approach the Court of Sessions by filing the revision petitions. Reliance was placed on the decision of the Supreme Court in the case of *K.M. Mathew* v. *State of Kerala and other* (4). In the cited decision the Supreme Court concluded that one the Judicial Magistrate passed an order summoning the accused, it is open to the accused to plead before the Magistrate that process against him ought not to have been issued. The Magistrate if he satisfies on re-consideration of the complaint, can drop the proceedings. The question that comes up for consideration is as to whether at this stage, will it be proper to issue such a direction. The Court of Sessions has already expressed its view. The revision petitions are pending for the past 6 years. It

(3) A.I.R..1970 SC 1101
(4) 1992 (1) Recent Crl. Reports 232

would be improper in these circumstances to direct the respondents to approach the Court of Sessions and restart a fresh chain of litigation by filing further revisions as the case may be. Keeping in view the aforesaid, in the peculiar facts, this contention of the learned counsel (for C.B.I.) necessarily must fail.

(11) In that event the counsel further contended that since it was simply an order summoning the respondents as accused, it was an interlocutory order and the Court of Sessions could not entertain the revision petitions. In this regard reference can be made to sub-section (2) of Section 397 of the Code of Criminal Procedure. It reads:—

> "397(2). The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

Sub-section (2) of Section 397 Cr. P.C. has been enacted to ensure that smooth trial is not frustrated. The day to day proceedings of the trial Court should not be interfered with by frequent revisions against the interlocutory order. This is to ensure that the trials proceed expeditiously. In the case of *V.C. Shukla* v. *State through C.B.I.*(5), the said purpose has been so explained. Code of Criminal Procedure by itself does not define as to what is an interlocutory order. But it obviously is an intermediate order made during the preliminary stage of the enquiry or trial (See *Parmeshwari Devi* v. *State* (6). When rights of the parties are not adjudicated, it must be taken to be an interlocutory order.

(12) This Court in the case *Dr. T.N. Chaturvedi* v. *Karnail Singh* (7), considered the same controversy. The accused had been summoned and it was held that it is an interim order and not a judgment. The same view prevailed with the Allahabad High Court in the case of *Kailash Chaudhari and others* v. *State of U.P. and another* (8), The Court held that an order issuing process on *ex parte* consideration of the complaint and material under section 204 Cr. P.C. is only a step towards the trial and is an interlocutory order. In paragraph 8 the Court concluded:—

(5) 1980 Crl. L.J. 690
(6) 1977 Crl. L.J. 254
(7) 1994 (3) Recent Crl. Reports 517
(8) 1994 Crl. L.J. 67

"However, an order issuing process on *ex parte* consideration of the complaint and the material u/s 204 of the Code being only a step towards trial is an interlocutory order, as held by the Supreme Court in *K.M. Mathew* v. *State of Kerala,* (1992)1 SCC 217 : (1991) 4 JT (SC) 464 : (1992 Cr LJ 3779) and, therefore, the Magistrate on being satisfied that the process ought not to have been issued, may recall, vary or rescind his order. It is in fact a matter of judicial discretion expected of a reasonable person to be exercised by the Magistrate. It may be observed that the parties are not *res integra* at the stage of issue of process on *ex parte* consideration of the material on record and that provides the reason why the order issuing process has been held to be interlocutory one. But since the sufficiency or otherwise of the grounds for proceeding is justifiable, the accused person may, in response to the process, appear before the Magistrate and say that there was no sufficient ground to proceed in the matter whereupon the Magistrate would be duty bound to decide the question after considering the view points of the accused on the question of there being *prima facie* case constituting sufficient ground to proceed and on the question whether the material, if any, brought on record shows that the accusation is frivolous and vexatious. The parties would then be at issue and the Magistrate would at this stage be deciding a *res* between them and such a decision would then be not the kind of an interlocutory order visualised by S. 397(2) of the Code and, therefore, it can be challenged in revision. The view in Amar Nath's case, AIR 1977 SC 2185 : (1977 Cri LJ 1891) that it is not an interlocutory order was taken in the peculiar fact of that case. The Magistrate in that case although required to hold fresh enquiry, issued process straightway without complying with the order of remand."

More recently this Court in the case of *Mandeep Singh* v. *State of Punjab* (9), also considered the same controversy. In paragraph 18 a Single

Judge of this Court held:—

(9) 1997 (2) Recent Crl. Reports 154

"Here I would also like to deal with when in such like cases a private complaint is lodged and after recording the prliminary evidence, the Magistrate prima facie summons the respondents as accused under the provisions of Section 204, Cr. P.C. This Court is of the opinion that such an order is an interim order and is not a judgment. The Code of Criminal Procedure gives an alternative remedy to the accused under Section 245(2) of the Code of Criminal Procedure, and resorting to Section 482, Cr. P.C., cannot be endorsed in view of the citation reported as *K.M. Mathew* v. *State of Kerala,* 1992 Criminal Law Journal 3779; and the latest on this point of our own High Court is *Bachan Singh* v. *Harpreet Kaur*, 1996 (1) R.C.R. (Crl), 806: 1996(3) All India Criminal Law Reporter 698."

Keeping in view the aforesaid, it must be held that revision petitions against the order summoning the respondents was not competent. In this regarding the findings of the learned Additional Sessions Judge cannot be sustained.

(13) But despite the above said findings when so much time has been lost it becomes necessary to decide the other controversies that arise for consideration.

(14) As referred to above, the complaint had been filed by the petitioner namely Deputy Chief Controller of Imports and Exports pertaining to certain offences already mentioned above. At the initial stage, therefore, the learned Judicial Magistrate only had the complaint and the other documents that were placed on the record. At that stage when such is the situation, the Court should only look into the allegations made in the complaint and the other material. On basis of the same cognizance has to be taken. The said findings get support from the decision of the Supreme Court in the case of *J.P. Sharma* v. *Vinod Kumar Jain and others* (10). In the cited cases the Deputy Chief Controller of Imports and Exports filed a complaint against certain person. The allegations were that accused had entered into a conspiracy to contravene the provisions of Section 5 of the Imports and Exports (Control) Act. It was alleged that an imprest licence was obtained. The imports were made which were illegal. The Magistrate had issued summons to the accused-persons. The Delhi High Court had quashed the complaint. It was held that the assertions made in the

(10) 1986 Crl. L.J. 917

complaint should be looked into. In paragraph 43 the Supreme Court held:—

> "The question at this stage is not whether there was any truth in the allegations made but the question is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed."

More recently in the case *State of Bihar* v. *Rajendra Agrawalla* (11), the Magistrate had taken the cognizance. The High Court had appreciated the evidence and quashed the proceedings. The Supreme Court held that it is improper for the Court to shift the evidence and what has to be seen is as to what is the material before the Magistrate at that time even in the complaint that was filed. In paragraph 5 the Supreme Court concluded:—

> "It has been held by the Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no *prima facie* case is made out."

Consequently, the Court has basically to see the assertions that are made in the complaint. If there is any other unimpeachable material, the same can be taken into consideration.

(15) Sections 203 and 204 of the Code of Criminal Procedure further provides the guidelines as to under what circumstances a complaint can be dismissed or the process can be issued. Sections 203 and sub-section (1) of Section 204 read:—

(11) 1996 (1) Recent Crl. Reports 530

"203. Dismissal of complaint.—If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

(204(1). If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons—case, he shall issue his summons for the attendance of the accused, or

(b) a warrant—case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction."

Perusal of the above quoted provisions would show that if on consideration of the statement on oath of the complainant and other material, the Magistrate is of the opinion that there is sufficient ground for proceeding, he shall dismiss the complaint. But if there is sufficient ground for proceeding, in that event, the process can well be issued. The catch word, therefore, is "sufficient ground for proceeding". The said expression has not been defined under the Code of Criminal Procedure. The same has been considered more often than once as to what would be sufficient ground for proceeding. In this regard reference to some of the decisions of the Supreme Court would throw considerable light. One of the earliest decision of the Supreme Court in this regard is under the code of Criminal Procedure, 1898. The provisions of Sections 203 and 204 were basically identical. In the case of *Chandra Deo Singh* v. *Prokash Chandra Bose alias Chabi Bose and another*(12), the Supreme Court concluded that there should be a *prima facie* case. It held:—

"Thus, where there is a *prima facie* case, even though much can be said on both sides, a committing Magistrate is bound to commit an accused for trial. All the greater reason, therefore, that where there is *prima facie* evidence, even though an accused may have a defence like that in the present case that the offence is

(12) A.I.R. 1963 SC 1430

committed by some other person or persons, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused."

This question had again been considered in the case of *Nirmaljit Singh Hoon* v. *The State of West Bengal and others* (13). The expression "sufficient ground for proceeding" was again interpretted and the Court held:—

"Under Section 203, he may dismiss the complaint, if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under Section 202, there is in his judgment "no sufficient ground for proceeding". The words 'sufficient ground' used also in Section 209 have been construed to mean the satisfaction that a *prima facie* case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction."

The aforesaid clearly shows that the 'sufficient ground' invariably would be that if there is *prima facie* case that is drawn, *prima facie* case has to be determined on the strength as to what is the material before the Judicial Magistrate at the relevant time. The cognizance can be taken and process issued if *prima facie* case is drawn. This is not with an ultimate eye to convict the accused subsequently. That has to be looked into at the appropriate time.

(16) In these circumstances, one has to see if there is a *prima facie* case or not. In the complaint, in paragraph 26 the name of Shri P.C. Aggarwal respondent has not been mentioned. But he had been arrayed as an accused in the complaint itself. This omission clearly is inadvertant. The respondent cannot take advantage of the same. The whole of the complaint has to be seen and logical conclusions arrived at. A typographical mistake cannot be magnified to assert that Shri P.C. Aggarwal is not an accused. When specific allegation has been made, there is no justification for the learned Additional Sessions Judge to mention the said fact as if there was no material against him.

(17) The learned Additional Sessions Judge while considering as to if there was any material against the respondents, went on to presume and assume certain facts. Reference to some of those

(13) A.I.R. 1972 SC 2639

findings show that certain facts were assumed in favour of the respondent. In paragraph 17, 18 and 20 the learned Additional Sessions Judge held:—

> "Firstly, there was no question of giving directions by the petitioner to Ravinder Kumar accused, to sign as Ravi Kumar, and secondly when he signed as Ravi Kumar, I do not think that the petitioner got any benefit, when the import licences were got by Ravi Kumar in the name of Impex Services."
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> 18. An other allegation against the petitioner is that his employees had paid rent of the premises taken for Impex Services at Amritsar. As already observed, the petitioner had got no concern with the Impex Services, and had not signed any document to get any benefit. It can, therefore, be presumed that the employees of the petitioner might have been taken into confidence by Impex Services.
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> 20. If Ram Parsad, was residing with the petitioner, it does not mean that huge amounts were deposited in his name or in the name of his family, and huge amounts were withdrawn from their accounts, by the petitioner. It is just possible that Ram Parsad came under the influence of M/s Impex Services, with which the petitioner had got no concern. Which might have made deposits an and withdrawals from their accounts."

These paragraphs show that the learned Additional Sessions Judge was presuming the facts which did not exist on the record. It may be that subsequently the same facts may be proved but at the initial stage keeping in view the assertions in the complaint, the learned trial court had rightly taken cognizance and issued the process. Indeed there were sufficient grounds to proceed. The details of the same have already been mentioned while enumerating the facts. Further discussion would be a *prima facie* expression of opinion which is not called for at this initial stage. Suffice to say that there were sufficient grounds to proceed against the respondents.

(18) Confronted with this situation learned counsel for the respondents Shri Hira Lal Sibal, Senior Advocate asserted vehemently that keeping in view the time that has elapsed, it will not be appropriate to set aside the order of the learned Additional Sessions Judge, Patiala. According to him keeping in view Article

21 of the Constitution and the delay that has occurred, the order whereby the learned Additional Sessions Judge held that there is no case drawn against the respondents must be maintained. He referred to large number of precedents in this regard.

(19) In the case of *S. Guin* v. *Grindlays Bank Ltd.* (14), the accused persons had been acquitted. The appeal against them remained pending in the High Court for six years. The Calcutta High Court set aside the acquittal and ordered re-trial. The Supreme Court held that keeping in view the long years that have expired, the termination of proceedings would secure the ends of justice. In paragraph 4 the findings of the Court were:—

> "Having regard to the inordinate delay of nearly six years that had ensued after the judgment of acquittal, the nature and magnitude of the offences alleged to have been committed by the appellants and the difficulties that may have to be encountered in securing the presence of witnesses in a case of this nature nearly 7 years after the incident. The termination of the criminal proceddings in that way would secure the ends of justice as it would bring about reconciliation between the management and the employees and also put an end to a stale criminal proceeding in which the public had no longer sufficient interest." Strong reliance was further placed on the well known decision of the Patna High Court in the case of *Madheshwardhari Singh and another* v. *State of Bihar* (15), Chief Justice S.S. Sandhawalia speaking for the Bench held that there should be no delay in trial or even during investigation. In paragraph 54 the findings were finally recorded to be:—
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> > "It is the admitted position that the petitioner who is a public servant of gazetted rank has lain under the shadow of a criminal charge all this while which has wrecked his service career. It is not even remotedly established that the delay in the investigation and the subsequent trial can at all be laid at the door of the petitioner. Indeed the boot is entirely on the other leg. The prosecution despite the closure of the case a number of times by the

(14) A.I.R. 1986 SC 289
(15) A.I.R. 1986 Patna 324

trial Court went up in revision and had the issue reopened. There has been no absconding or any other obstructive tactics by the petitioner herein which could even remotely point an accusing finger at him. On the facts no extraordinary or exceptional reason for the delay could be pointed out by the prosecution and indeed the tardiness and nonchalance with which the prosecution has been conducted appear manifest on the record. It is thus plain that the case herein comes squarely within the rules enunciated above. The Constitutional right to speedy trial by a fair, just and reasonable procedure now recognized under Article 21 of the Constituion stands plainly violated. As has been authoritatively laid down in Maksudan Singh's case. (AIR 1986 Pat 38) (FB), the petitioner is entitled to an unconditional release and the charges levelled against him would necessarily fall to the ground. The petition is consequently allowed and the investigation and the trial against the petitioner are hereby quashed."

Some of the decisions from this Court at this stage can also be taken not of. In the case of *Sunder Lal* v. *State of Haryana* (16), proceedings under the Prevention of Food Adulteration Act were pending for the last 9 years. Keeping in view Article 21 and right of speedy trial, the same were quashed. Strong reliance was placed on the decision of the Supreme Court in the case of *S.G. Nain* v. *Union of India,* (17), The proceedings were pending in the Supreme Court for 14 years. It was held by the Supreme Court in that case that stale prosecution should not continue. In paragraph 3 the Supreme Court held:—

"It is difficult to get over the fact that the prosecution against the appellant is pending for almost fourteen years. Apart from mental agony, it must have adversely affected him in his service career. In the facts of this case it is difficult rather impossible to arrange a fair trial to the appellant after such a long time-lapse. It would be sheer waste of public time and money a prat from causing harassment to the appellant. It is no doubt correct that this appeal has been pending in this Court for almost eleven years

(16) 1993 (1) Chd. Law Reporter 388
(17) 1992 (3) Recent Crl. Reports 175

but that is not ground to permit this stale prosecution to go on. It is no doubt correct that this appeal has been pending in this Court for almost eleven years but that is not ground to permit this stale prosecution to go on. It is not the stale-action but its effect on the citizen which is relevant."

(20) Learned counsel for the Central Bureau of Investigation on the contrary relied upon the decision in the case of *Municipal Corporation of Delhi* v. *Girdharilal Sapuru and others* (18). In the cited case a similar argument was floated. The Supreme Court held that delay should not stand in the way and in paragraph 6 concluded as under:—

"No other contention was raised before us by Mr. Singh save saying that long time has elapsed since the prosecution was launched and, therefore, further trial would cause hardship to the accused. Times without number it has been pointed out by this Court that those who indulge into such a pernicious activity of manufacturing and/or selling adulterated articles of food posing a threat to the health and well-being of large number of people should be properly dealt with according to law and in such cases such narrow technicalities should not be allowed to outweigh the cause of justice."

Similarly in the case of *Mangilal Vyas* v. *State of Rajasthan* (19), the accused was being tried under the Prevention of Corruption Act. He had embezzled the funds of the Co-operative Society. 25 years had expired. A similar argument that there is delay and, thus, the proceedings should be quashed was considered. The proceedings were not quashed but directions were issued for expeditious trial. The Supreme Court in paragraph 4 noted:—

"We do not consider it necessary to narrate the detailed facts leading to the present appeals except to state that the trial in the pending cases has been unduly protracted due to various causes. It is no doubt regrettable feature, but having regard to the nature of the allegations made and the availability of evidence in support of the prosecution, it is not expedient to terminate the proceedings at this state, on account of lapse of time alone, by invoking the inherent power of the court. We

(18) A.I.R. 1981 SC 1169
(19) 1990 (1) Recent Crl. Reports 381

think that the circumstances of the case only call for appropriate directions for the expeditious disposal of the pending proceedings and the law has to be allowed to take its own course to prevent miscarriage of justice."

In fact in the well known decision of the Supreme Court in the case *Abdul Rehman Antulay etc.* v. *R.S. Nayak and Anr.* (20), the directions of the Full Bench of the Patna High Court in the case *Madheshwardhari Singh and another* v. State of Bihar (supra) whereby outer limit of seven years for trial, was not approved.

(21) Having referred to some of the precedents on the subject, the conclusions in this regard necessarily must be drawn. Indeed speedy trial enshrined under Article 21 of the Constitution is a fundamental right. But we may ask a question as speedy mean how speedy? In this regard nature of the offence, the number of accused, the tractics adopted, the work load of the court and all co-related factors cannot be lost sight of. The non-availability of the witnesses and at times the members of the bar being not available and on certain occasions presiding officer on leave also add to the delay. The precedents referred to above indeed were basically confined to the peculiar facts of the case. No hard and fast rule can be laid. We know that in the case of *Hussainara Khatoon* v. *State of Bihar* (21), the Supreme Court had given a call for expeditious disposal of the cases. But delays are inherent in the trials that take place. A huge amount is alleged to have swindle and certain serious economic offences purported to have been committed. To give benefit of delay would be improper. Most of the delay has occurred because of the first revision and thereafter the second revision that has been filed. In the peculiar facts of the present case, the nature of the offence is serious and, therefore, it appears that quashing of the proceedings would be totally against the interest of justice. A direction as held by the Supreme Court in the case of *Mangilal Vyas* (supra) would meet the ends of justice. Consequently, on this the respondents should not succeed.

(22) For these reasons given above, it is concluded that the revision petitions were not maintainable and in any case there were sufficient grounds to proceed against the respondents. The learned Additional Sessions Judge was not justified in presuming the facts in favour of the respondents. Consequently, the judgements of the

(20) 1992 (1) All India Crl. Law Reports 1
(21) A.I.R. 1979 SC 1360

learned Additional Sessions Judge are set aside, restoring that of the learned Judicial Magistrate. It is directed that the learned Judical Magistrate will try and expedite the trial of the case . He will preferably complete the trial within one year from the date of receipt of the order. The parties are directed to appear before the learned Judicial Magistrate at Patiala on 2nd July, 1997.

S.C.K.

Before Ashok Bhan and N.K. Agrawal, JJ.

COMMISSIONER OF INCOME TAX, HARYANA,—*Petitioner*

versus

JASWANT RAI,—*Respondent*

I.T.C. No. 61 of 1991

31st October, 1996

Income Tax Act, 1961—Ss. 256(2) and 271(1)(c)—Reference—Levy of penalty—Assessee agreeing to certain additions in assessment year 1984-85 though only part of income related to that year—Assessee subjecting himself to higher tax by agreeing to addition in one assessment year—This course adopted by assessee to buy peace of mind and to avoid litigation and on an assurance that no further proceedings for levy of penalty would be initiated—No assurance in writing—Not material—Presumption arises—Appellate Court setting aside order of penalty—Tribunal also maintaining order in appeal and refusing reference on question of law—Findings of fact recorded by Tribunal and refusal to refer question which does not raise any question of law—Application u/s 256(2) of the Act liable to be rejected.

Held, that the assessee had, in each case, agreed for certain additions in the assessment year 1984-85 though only part of the income related to this year. By agreeing for the addition to be made in the assessment year, the assessee subjected himself to higher tax. It gives rise to a natural presumption that the agreement was conveyed to the Assessing Officer during the course of the assessment proceedings so as to buy peace of mind and to avoid litigation or an understanding and assurance that no further proceedings for the levy of penalty would be initiated. This finding of fact given by the Tribunal does not give rise to any question of law.

(Para 14)