Lokesh Kumar Jain vs State Of Rajasthan on 9 July, 2013

Equivalent citations: AIRONLINE 2013 SC 220, 2013 (11) SCC 130, (2013) 3 CURCRIR 430, (2013) 3 DLT(CRL) 874, (2013) 3 KER LT 56, (2013) 3 RAJ LW 2689, (2013) 3 RECCRIR 763, (2013) 3 SERVLJ 61, (2013) 56 OCR 222, (2013) 8 SCALE 455, (2014) 1 ALLCRIR 123

Bench: Sudhansu Jyoti Mukhopadhaya, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 888 OF 2013
(ARISING OUT OF SLP(Crl.)NO.4513 OF 2012)

LOKESH KUMAR JAIN … APPELLANT

VERUS

STATE OF RAJASTHAN … RESPONDENT

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted. This appeal has been preferred by the appellant against the order dated 2nd March, 2012 passed by the Rajasthan High Court, Jaipur Bench in S.B. Criminal Miscellaneous Petition No.605 of 2006 titled Lokesh Kumar Jain v. State of Rajasthan. By the impugned order, the High Court refused to quash the FIR No.10/2000 lodged against the appellant under Section 409 IPC at Police Station, Dausa. The petition under Section 482 Cr.PC was disposed of by the High Court with the following observation:

> "This criminal misc. petition has been filed under section 482 Cr.PC for quashing of FIR No.10/2000 registered at Police Station, Dausa.

This Court has asked the learned counsel for the petitioner whether challan has been filed or not. He replied that still challan has not been filed and the matter is under investigation.

If it is to, the petitioner is permitted to file representation/documents on the basis of the judgment of the Hon'ble Supreme Court or any other Court, the I.O. Should investigate the matter on the basis of the judgment/documents/representation so filed by the petitioner and thereafter shall file progress before the court concerned.

Accordingly, the petition is disposed of." In order to appreciate the rival stands of the parties, it would be necessary to notice the background facts in a greater detail.

The appellant was posted as Lower Division Clerk (for short, 'LDC') during the period November, 1996 to November,1997 in the Office of District Literacy Education Officer, Dausa. On 4th January, 2000, the District Literacy Education Officer, Dausa registered a First Information Report (for short, 'FIR') in Police Station, Dausa alleging therein that when the appellant was posted as LDC-cum-Cashier, a financial irregularity was committed by him. As per the report of Auditor General, an embezzlement of Rs.4,39,617/- has been discovered. The original copies of the bills and documents were available in the office of the Auditor General and in the office of Directorate for the State Literacy Programme. Therefore, on the basis of report given by the Auditor General, the FIR was filed.

On the basis of report submitted by the complainant, the Police lodged FIR No.10/2000 of the incident alleged to have taken place in the year 1996- 1997, implicating appellant as an accused. After making investigation, the Police submitted a final report in the matter on 2nd June,2000 before the Chief Judicial Magistrate, Dausa (hereinafter referred to as the, "CJM, Dausa") During the pendency of the matter before the CJM, Dausa, the complainant filed an application on 18th November, 2000 before the CJM, Dausa requesting therein to send back the matter to the Police for further investigation. The CJM, Dausa vide order dated 18th November, 2000, sent back the matter to the Police under Section 156(3) of Cr.PC. Since then the matter remained pending with the police. According to the appellant, he met as well as represented on a number of times to the Police Authorities and the Departmental Authorities but still no action has been taken by the Authorities. Neither final report is submitted nor the challan is being filed and the matter is pending since then. Earlier in the final report, it was stated that the Police informed that the original copies of the bills and another documents are not available, therefore, no investigation could be made.

Having waited for more than six years, the appellant preferred a petition under Section 482 Cr.PC before the Rajasthan High Court being Criminal Miscellaneous Petition No.605/2006 to set aside the FIR No.10/2000 registered at Police Station, Dausa.

In the meantime, a Departmental Inquiry was initiated against the appellant for the same charges in which the Inquiry Officer after inquiry submitted his report on 15th December,2008 exonerating the appellant from the charges.

The High Court by impugned order dated 2nd March, 2012 chose not to interfere with the FIR and again left the matter in the hands of the authorities. Hence, the special leave petition was filed by the appellant before this Court.

Learned counsel for the appellant challenged the decision of the High Court on the following grounds:

> (a) Since the date of order passed by the CJM, Dausa the appellant has been suffering the harassment of investigation for more than 13 years which is not completed till

date because of lack of supply of documents.

(b) After filing the closure report way back in the year 2000 no effective investigation has taken place.

(c) If investigation is allowed to continue even in absence of document, it will be futile and can only cause harassment to the appellant, serving no purpose as even in the departmental inquiry for said charges conducted against the appellant in the year 2009, the appellant was exonerated as none of the charges which also form the basis of the present FIR could be proved against the appellant.

He also relied on decisions of this Court which will be discussed in the following paragraphs of this judgment.

The State of Rajasthan has filed counter affidavit. According to them, the investigation is still continuing and the appellant himself is delaying the same due to non-cooperative attitude adopted by him. In any case, from the investigation carried out till now, offence under Section 409 IPC is clearly made out against the appellant and on this ground alone, the petition seeking quashing of FIR is liable to be dismissed and the legal process deserves to be taken to a logical end.

12. Though the aforesaid stand has been taken by the respondent in their counter affidavit, the respondent is silent about the documents i.e. whether they have been made available to the Police for further investigation. Further no specific instance was shown to suggest that the appellant failed to cooperate with the Investigating Agency on any particular date.

13. Before deciding the question whether under the given circumstances the High Court should have exercised its inherent powers under Section 482 Cr.PC to prevent abuse of process of any court or otherwise to secure the ends of justice, it will be desirable to notice some of the decisions of this Court relating to categories of cases wherein extraordinary power under Section 482 Cr.PC could be exercised by the High Court to prevent abuse of process of the Court.

14. In State of Haryana v. Bhajan Lal, 1992 (Suppl.) 1 SCC 335 this Court while formulating the categories of cases by way of illustration, wherein the extraordinary power under the aforestated provisions could be exercised by the High Court to prevent abuse of process of the Court and observed as follows:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible

guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. Need for speedy investigation and trial as both are mandated by the letter and spirit of the provisions of Cr.PC have been emphasized by this Court in numerous cases.

16. In Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81 this Court observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. This Court further observed that:

"8. In regard to the exercise of the judicial power to release a prisoner awaiting trial on bail or on the execution of a personal bond without sureties for his appearance, I have to say this briefly. There is an amplitude of power in this regard within the existing provisions of the Code of Criminal Procedure, and it is for the courts to fully acquaint themselves with the nature and extent of their discretion in exercising it. I think it is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the undertrial does not flee or hide himself from trial, all the relevant considerations which enter into the determination of that question must be taken into account. A synoptic impression of what the considerations could be may be drawn from the following provision in the United States Bail Reform Act of 1966:

"In determining which conditions of releases will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offence charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings." These are considerations which should be kept in mind when determining the amount of the security or monetary obligation. Perhaps, if this is done the abuses attendant on the prevailing system of pre-trial release in India could be avoided or, in any event, greatly reduced."

17. In Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225, the Court formulated as many as 11 propositions with a note of caution that these were not to be treated as exhaustive and were meant only to serve as guidelines.

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily.

Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. (2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view. (3) The

concerns underlying the right to speedy trial from the point of view of the accused are:

> (a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
>
> (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
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> (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.
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> (4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings.

Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell in the following words:

> '... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential

ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.' However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature.

Such proceedings in High Court must, however, be disposed of on a priority basis."

18. Seven learned Judges of this Court in P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578, considered the validity of the ratio laid down in Common Cause case (I) as modified in Common Cause case (II) and Raj Deo Sharma (I) and (II) cases wherein this Court prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and directed to close the proceeding by an order acquitting or discharging the accused in such cases. In the said case of P. Ramachandra Rao(supra) after exhaustive consideration of the authority on the subject this Court held:

> "29. For all the foregoing reasons, we are of the opinion that in Common Cause case (I) [as modified in Common Cause (II)] and Raj Deo Sharma (I) and (II) the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:
>
> (1) The dictum in A.R. Antulay case is correct and still holds the field.
>
> (2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.
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> (3) The guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-

fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made. (4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused. (5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227

of the Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and qualitatively — by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act."

19. This Court in Vakil Prasad Singh v. State of Bihar, (2009) 3 SCC 355 considered the question of quashing of criminal proceedings due to delay, when warranted. Referring to earlier decisions of this Court on the issue, this Court held that speedy investigation and trial, both are enshrined in Cr.PC. The right to speedy trial is guaranteed under Article 21 and the same is applicable not only to actual proceedings in court but also includes within its sweep the preceding police investigations as well.

20. In Vakil Prasad Singh(supra) one search operation was conducted by the office of Superintendent of Police, Crime Investigation Department (Vigilance), Muzaffarpur, on the basis of a complaint lodged by a civil contractor against the accused, an Assistant Engineer in the Bihar State Electricity Board (Civil) Muzaffarpur, for allegedly demanding a sum of Rs.1000 as illegal gratification for release of payment for the civil work executed by him. The case was instituted on 8th April, 1981 and the charge- sheet for aforesaid offences was filed against the accused on 28th February, 1982. The Magistrate took cognizance on 9th December,1982 but nothing substantial happened. The accused filed a petition under Section 482 Cr.PC before the Patna High Court against the order passed by the Special Judge, Muzaffarpur taking cognizance of the said offences, on the ground that the Inspector of Police, who had conducted the investigations, on the basis whereof the charge-sheet was filed, had no jurisdiction to do so. Accepting the plea, the High Court by its order dated 7th December, 1990 quashed the order of the Magistrate taking cognizance and directed the prosecution to complete the investigation within three months. However, no further progress was made and the matter rested there till 1998, when the accused filed another petition under Section 482 Cr.PC, giving rise to the appeal before this Court.

21. Having noticed the ratio laid down by this Court in number of cases including State of Haryana v. Bhajan Lal (supra), Hussainara Khatoon (supra), Abdul Rehman Antulay (supra) etc. and the relevant facts of Vakil Prasad Singh (supra) case, this Court was of the view that it was a fit case where the High Court should have exercised its power under Section 482 Cr.PC as the State was not sure as to whether a sanction for prosecuting the accused is required and if so, whether it has been granted or not and that the case was pending for about 17 years and the proceedings against the appellant was quashed.

22. To find out the factual scenario, we have noticed the background in a greater detail as mentioned hereunder:

23. On 4th January, 2000, the following allegation was made by the complainant-District Literacy & Education Mission Officer, Dausa in the FIR, the relevant portion of which is quoted below:

"First Information Report Office of literacy and continuous education mission, Dausa File No.672 dated 4.1.2000 To, The SHO Police Station: Dausa Subject: Regarding misappropriation of the amount of pending Bill for the period 11.96-11.97 by Sh.Lokesh Jain LDC(Cashier), In reference to the above subject, it is requested that Sh. Lokesh Jain, Lower Division Clerk (Cashier) presently under suspension while working on the post of cashier has committed financial irregularities for which financial department and office of CAG conducted an enquiry which is annexed herewith.

As per the enquiry report Rs.4,39,617 has been misappropriated, all the copies of the original bill are present in the office of CAG and the original documents are available in the office of Directorate State Literacy and Education Mission.

Hence, it is requested that an FIR may be got registered on the basis of the annexed enquiry report of the office of the CAG.

Enclosures enquiry 8 pages Sd/-

District Literacy & Education Mission Officer, Dausa"

24. After conducting investigation, the Investigation Agency submitted Final Report on 2nd June,2000 before the CJM, Dausa, the relevant portion of which reads as follows:

"Brief Facts of the case:

Respected Sir, The facts of the present case are that on 4.1.2000 Sh. Murari lal S/o Sh. Harmukh Prasad, caste: Brahmin, aged 56 years, R/o Village: Oonch, P.S: Nandbai, District:Bharatpur presently posted as district literacy and mission education officer, Dausa, presented in the Police Station and filed one report against Sh. Lokesh Kumar Jain (LDC) presently under suspension that Lokesh Jain while working as cashier, committed certain financial irregularities which emerged during an enquiry conducted by the office of the Controller and Auditor General as per which misappropriation of Rs.4,39,619/- has been reflected.

Copy of report is annexed; copies of the original document of CAG and original document of state literacy and mission education office are available. On the basis of the said report FIR No.10/2000 u/s 409 of IPC was registered and investigation witnesses were recorded. Oral requests were made several times to the concerned department for producing the requisite document pertaining to the case but was ineffective subsequently on 13.4.2000. A notice was issued u/s 91 Cr.PC for making available of the requisite document but despite that no record was made available.

Again on 21.4.2000 a notice u/s 91 Cr.PC was issued and directions were given that in case of non-supply of document one sided action will be taken. No document, no record was produced.

During the course of investigation pertaining to Lokesh Jain (LDC) for the period 11.96 -11.97 statements of Sh. Kailash and Ram Kishor Bairwa (Jr. accountant) who stated that during investigation credit-debit record was not made available and they showed their inability to produce the record before the I.O, No. T.P. 31162, a complaint was also given in this regard, C.O. has also written to the department to produce the record but they showed their inability to produce the same.

The present case, several requests were made for production of record but the same was not produced. No evidence came against Sh. Lokesh Jain, from the file of the education department. The case has been pending since long and there is no probability of availability of record in the near future. Further investigation will be taken on the receipt of the records from the concerned departments.

Hence FR No.67/2000 is being filed for kind perusal and acceptance because of insufficient evidence."

25. On perusal of Final Report, the CJM, Dausa passed the following order:

> "Before the Chief Judicial Magistrate District: Dausa, Dausa Complainant: Murari Lal 18.11.2000 Present App.

Present complainant: Sh Murari Lal Sharma In this case final report has been filed with the avernment that the original record has not been supplied to the SHO and hence investigation cannot be carried out. The complainant Murari Lal is present and he is ready to cooperate with the police officers for procuring the said records.

Hence u/s 156(3) Cr.PC the SHO Dausa is directed to re-investigate the case with the assistance of Sh. Murari Lal literacy and mission education officer to procure the original records. Final report is not accepted, case diary is being returned.

Sd/- CJM District: Dausa, Dausa"

26. Thereafter, nothing on the record suggest that after the order dated 18th November, 2000 passed by the CJM, Dausa the respondent produced the original records before the Investigation Agency for further investigation.

27. At least for more than nine years neither original records could be traced by the Authorities nor any relevant document could be found to implicate the appellant, as evident from the Inquiry Report dated 15th December,2008 submitted by the Inquiry Officer whereby the appellant was exonerated over the identical charges for which criminal case was lodged. The respondent inspite of repeated requests by the Inquiry Officer failed to produce any records including originals from the Bank to establish the guilt of the delinquent official, Sh.Lokesh Kumar Jain. The relevant portions of Inquiry Report dated 15th December, 2008 are quoted hereunder:

> "The prosecuting officer after the lapse of various dates has presented the following documents:
>
> a) Books of accounts, Encashment Register and Bill register (all photocopies)
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> b) Letter dated 26-04-2004 issued by S.B.B.J. Bank Branch Dausa which was addressed to the office of Literacy officer, Dausa.
>
> c) Letter dated 21-11-2008 issued by the office of the treasurer of the treasury.
>
> d) Letter bearing CA/II/Dausa/176 dated 04-11-2008 issued by the office of the chief auditor.

According to the aforesaid documents, the photocopies of the original documents was shown to the alleged officer. After the perusal of the photocopies, the alleged officer denying the same has again filed the application on 12-01-2009 and demanded that he might be allowed to peruse the original records. The objections were raised by the alleged officer and the prosecuting officer was given strict direction to present the original record and evidence. On the next several dates also the prosecuting officer failed to produce any other original record.

On 24-07-2009, the alleged officer along with the assistant perused the case and the related document and letters in the presence of the prosecution party and for the purpose of the presenting the written argument the case was fixed for 29-07-2009. The defence appearing along with the assistant has filed his written argument which was taken on record.

The prosecution party and the defence party were given one last and final opportunity to present the witness/evidence/documents in accordance with the principle of natural justice. On the date fixed neither the prosecution nor the defence has filed their witness/evidence/documents.

According to the notification, following offence was alleged against Shri Jain on 22-12-2007:

> 1. That you Shri Lokesh Kumar Jain (Cashier) being in the office of the District Education and Education officer Dausa from 20-11-1995 to 13-11-

1997, was given the work of accountant.

According the inquiry report of 11/96 to 11/97, an embezzlement of Rs.4,39,617/- was found to be done by you.

The details of the allegation is depicted as follows:

> a) Bills of F.V.C. amounting to Rs.65,330/- is found to be entered in the Bill Register but after the passing of the bill from the treasury, the entry of which was not found in the encashment register and books of account.

There is no entry of any bill of F.V.C. in the aforesaid manner in the photocopy of the records (Cash book, Encashment Register) filed by the prosecution in respect of the offence alleged. From the bare perusal it becomes clear that the bill which is entered, the earlier entry record of which is entered according to the rules. The letter of both the agencies were produced in respect of the withdrawal of various bills of F.V.C. amounting to Rs.65,330/- (P-1) from the banks and in respect of passing from the treasury and the said bills are also found to be mentioned in the bill register (P-2) (P-3). The entries of the bills are not available in the other records apart from the Bill Register. On the basis of the documents produced (P-2) (P-3) by the prosecution, the original bill which was to be obtained from the office of the Chief Auditor, was not received (P-4).

Hence it is not clear that which person has withdrawn the said bills from the bank nor the original bill is there on record, looking into the pages of which conclusion could be drawn that who has withdrawn the amount of the said bills from the bank.

In the light of the said evidence (P-2) (P-3) the first part of the offence (1), the offence of embezzlement of amount by withdrawing the amount of said bills from the banks could not establish the guilt of the Delinquent Officer Shri Lokesh Kumar Jain. Hence the part of the offence is not established in respect of the accused.

2. The entry of the Bills of F.V.C. amounting to Rs.2,96,100/- is found in the Bill Register, Encashment Register and Books of account:-

> In respect of the said offence, the original bill or the carbon copy of the said bills is not filed by the prosecution. On the basis of the documents P-1 and P-2 filed by the State, the delinquent member could not be held guilty for the withdrawal of the amount of the said bills. The said offence merely on the basis of the letters of the bank and Treasury could not be regarded as cogent evidence. The entries of the bills are not available on any record of the related office. In the inquiry, the original bills are not available with the Assistant Agency Treasury nor the carbon copies of the bills are available in the office. In the said facts and circumstances, it could not be established that the said bills are withdrawn by Shri Lokesh Kumar Jain because in ordinary course of business it is not possible for single person to execute the entire work that is to say generation of bills, getting it passed and withdrawing the same.
>
> Hence the second part of offence is not proved against Shri Lokesh Kumar Jain for want of cogent and sufficient proof.

3. Embezzlement of the amount of Rs.78,179/- by withdrawing the bills of the other department in the head of Literacy and Education in the Budget.

The prosecution has filed the evidence of (P-2) (P-3) in respect of the offence. According to the evidence, the payment was made for the purpose of making the payment of the bills of said Sparsh Vidyalaya RAMAVI Dhigariya but in the budget the same is under the head of Literacy and Education department.

The entire part of the offence is completely disputed. There is withdrawal of the bills of the other department in the head of Literacy and Education in the Budget but it is not clear as to who has received the payments. Merely on the basis of the Treasury office regarding the fact of expenditure and receiving the payments does not prove the delinquent officer to be the guilty of the offence. It is possible that error might have happened by the other assisting agency. It is also impossible to pass the bill merely on the budget head. It could not be ascertained, without looking to pages of the original records, whether the guilty officer has obtained the payment of the bills from the bank or not.

CONCLUSION:

> On the basis of the records, evidence and documents presented in the proceedings and upon the basis of written and oral arguments of both the parties, the undersigned comes to the conclusion that who was made the payment of amount of various bills alleged in the offence is doubtful. All the said bills were passed by the Treasurer. The original and carbon copies of the said entire bills is not available with the department. Merely on the basis of the letters of the Assisting Agencies the offence against the alleged officer is not found to be established.
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> Sd/- Chitarmal Meena Inquiry Officer and Principal Officer, RAU Department Bhandarej, Dausa."

28. In P.S. Rajya v. State of Bihar, (1996) 9 SCC 1, this Court noticed that the appellant was exonerated in the departmental proceeding in the light of report of the Central Vigilance Commission and concurred by the Union Public Service Commission. The criminal case was pending since long, in spite of the fact that the appellant was exonerated in the departmental proceeding for same charge.

29. Having regard to the aforesaid fact, this Court held that if the charges which is identical could not be established in a departmental proceedings, one wonders what is there further to proceed against the accused in criminal proceedings where standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in the departmental proceedings.

30. Having regard to the factual scenario, noted above, and for the reasons stated below, we are of the opinion that the present case of the appellant is one of the fit cases where the High Court should have exercised its power under Section 482 Cr.PC. It is not disputed by the respondent that the departmental proceeding was initiated against the appellant with regard to identical charges made in the FIR. It was alleged that as per CAG Inquiry Report dated 15th December, 2008 Rs.4,39,617/- has been misappropriated by the appellant, all the copies of original bills and documents are available in the office of CAG and the original documents are available in the office of the Directorate, State Literacy Programme.

31. In the departmental proceeding identical allegation was made that as per the Inquiry Officer Report, an embezzlement of Rs.4,39,617/- was found to be done by the appellant.

32. During the investigation inspite of several requests made by the Investigating Agency (Police), the records in respect of allegation were not produced. No evidence came against the appellant-Lokesh Kumar Jain, from the file of the education department. As the case was pending since long and there was no possibility of availability of record in the near future, FR No.67/2000 against the appellant was filed before the CJM, Dausa. The CJM, Dausa by his order dated 18th November, 2000 on perusal of Final Report, in exercise of power conferred under Section 156(3) Cr.PC directed the SHO, Dausa to re-investigate the case with the assistance of complainant and to procure the original records. Inspite of order dated 18th November, 2000, for nine years, records were not made available, as apparent from the Inquiry Report dated 15th December,2008.

33. There is nothing on the record, even by way of counter affidavit filed before this Court to show that record has now been traced to make it available to the Investigating Agency. There is no probability of finding out original documents or evidence mentioned in the counter affidavit.

Though, delay has been alleged on the part of the appellant, there is nothing on the record to suggest that the appellant caused delay in the matter of investigation. On the other hand, the silence on the part of the respondent regarding availability of the original record or other evidence before the Investigating Agency shows that the delay caused due to inaction on the part of the respondent. Therefore, in our view, keeping investigation pending for further period will be futile as the respondent including Directorate for the State Literacy Programme is not sure whether original records can be procured for investigation and to bring home the charges. Considering the fact that delay in the present case is caused by the respondent, the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution is thereby violated and as the appellant has already been exonerated in the departmental proceedings for identical charges, keeping the case pending against the appellant for investigation, is unwarranted, the FIR deserves to be quashed.

34. In the result, the appeal is allowed and the FIR No.10/2000 lodged in Police Station, Dausa as against the appellant is hereby quashed.

………………………………………………………………………………….J. (T.S. THAKUR) ……………………………………………………………………….J. (SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI, JULY 9,2013