# Niranjan Hemchandra Sashittal & Anr vs State Of Maharashtra on 15 March, 2013

## Equivalent citations: AIR 2013 SUPREME COURT 1682

## Author: Dipak Misra

## Bench: Dipak Misra, K. S. Radhakrishnan

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 50 OF 2012

Niranjan Hemchandra Sashittal
and another ... Petitioners

Versus

State of Maharashtra ...Respondent

J U D G M E N T

Dipak Misra, J.

The gravamen of grievance of the petitioners in this petition preferred under Article 32 of the Constitution of India pertains to procrastination in trial, gradual corrosion of their social reputation, deprivation of respectable livelihood because of order of suspension passed against the petitioner No. 1 during which he was getting a meagre subsistence allowance and has reached the age of superannuation without being considered for promotion, extreme suffering of emotional and mental stress and strain, and denial of speedy trial that has impaired their Fundamental Right enshrined under Article 21 of the Constitution. The asseverations pertaining to long delay in trial have been made on the constitutional backdrop leading to the prayer for quashment of the proceedings of Special Case No. 4 of 1993 pending in the court of learned Special Judge, Greater Bombay.

2. Before we proceed to state the factual score, it is necessary to mention that this is not the first time that the petitioners have approached this Court. They, along with others, had assailed the order of the High Court of Bombay declining to quash the criminal proceedings against the petitioners and

others on the ground of delay in investigation and filing of charge sheet in three special leave petitions which were converted to three criminal appeals, namely, Criminal Appeal Nos. 176 of 2001, 177 of 2001 and 178 of 2001. This Court adverted to the facts and expressed the view that there was no justification to quash the criminal prosecution on the ground of delay highlighted by the appellants in all the appeals. However, this Court took note of the allegations against two senescent ladies who were octogenarians relating to their abetment in the commission of the crime and opined that the materials were insufficient to prove that the old ladies intentionally abetted the public servant in acquiring assets which were disproportionate to his known sources of income and further it would be unfair and unreasonable to compel them, who by advancement of old age, would possibly have already crossed into geriatric stage, to stand the long trial having no reasonable prospect of ultimate conviction against them and, accordingly, on those two grounds, allowed the appeals preferred by them and quashed the criminal prosecution as far as they were concerned. The other appeals, preferred by the public servant and his wife, stood dismissed.

3. Be it noted, in the said judgment, while quashing the proceedings against the two ladies, this Court referred to the decision in Rajdeo Sharma v. State of Bihar[1] and observed that the trial was not likely to end within one or two years, even if the special court would strictly adhere to the directions issued by this Court in Rajdeo Sharma's case.

4. The facts as uncurtained are that the Anti Corruption Bureau (ACB), after conducting a preliminary enquiry, filed an FIR on 26.6.1986 against the petitioner No. 1 who was a Deputy Commissioner in the Department of Prohibition and Excise, Maharashtra Government, for offence punishable under Section 5(2) of the Prevention of Corruption Act, 1947. The lodgement of the FIR led to conducting of raids at various places and, eventually, it was found that the petitioner, a public servant, had acquired assets worth Rs.33.44 lakhs which were in excess of his known sources of income. After the investigation, the Government of Maharashtra was moved for grant of sanction which was accorded on 22.1.1993 and thereupon, the charge-sheet was lodged against the petitioners along with two old ladies on 4.3.1993 before the Special Court. The offence alleged against the petitioner, the public servant, was under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. Allegations against the ladies were abetment for the main offences. As there was delay in conducting the investigation and filing of charge-sheet and disposal of certain interlocutory applications, the High Court of Bombay was moved on 15.4.1997 for quashing of the criminal proceedings. As has been stated earlier, the High Court declined to interfere and, hence, all the accused persons approached this Court in appeal, wherein the criminal case in respect of the old ladies was delinked and quashed.

5. It is asserted in this petition that after this Court disposed of the earlier criminal appeals, charges were framed only on 15.12.2007 nearly after expiry of seven years. It is put forth that during the pendency of the trial, the wife of the petitioner No. 1 has breathed her last on 23.5.2008. It is averred that nearly after four years of framing of charges, on 1.2.2011, Shri Vasant S. Shete, the Investigating Officer, was partly examined by the prosecution and, thereafter, the matter was adjourned on many an occasion. Despite the last opportunity being granted by the learned Special Judge, the Investigating Officer was not produced for examination. As pleaded, the Investigating Officer appeared before the Special Judge on 20.7.2011 and sought further time instead of getting

himself examined. Thereafter, the matter was adjourned on 25.8.2011, 21.9.2011 and 18.10.2011 and the examination of the Investigating Officer could not take place. On 15.11.2011, the Investigating Officer submitted a letter to the Assistant Commissioner of Police, ACB, stating that he had already taken voluntary retirement and due to bad health was unable to attend the court and follow up the case. He made a request to the ACP to appoint some other officer for prosecuting the case. Thereafter, the Investigating Officer absented himself before the learned trial judge to give his evidence. It is contended that because of the said situation, the examination-in-chief of PW-1 has not yet been completed and the other witnesses have not been produced for examination by the prosecution. It is urged that despite prayer made by the petitioner that the prosecution case ought to be closed because of its inability to produce the witnesses, the learned Special Judge has not closed the evidence. It is urged that more than ten years have elapsed since the earlier judgment of this Court was rendered and, therefore, the whole proceeding deserved to be quashed. Emphasis has been laid on the loss of reputation, mental suffering, stress and anxiety and the gross violation of the concept of speedy trial as enshrined under Article 21 of the Constitution.

6. The stand of the State of Maharashtra, respondent No. 1, is that after delivery of the judgment in the earlier appeals, the accused on 29.3.2001 moved numerous miscellaneous applications seeking various reliefs and made a prayer that framing of charges should be deferred till all the miscellaneous applications were decided. He moved the High Court in its revisional jurisdiction and writ jurisdiction and though the High Court did not grant stay, yet the case was adjourned at the instance of the accused. On number of occasions, the accused himself moved applications for adjournment and some times sought adjournment to go out of the country to Bangkok, Thailand and Singapore.

7. Even after the trial commenced, the accused did not cooperate and remained non-responsive. A chart has been filed showing the manner in which adjournments were taken by the accused at the stage of framing of charge on the ground that the matter was pending before the High Court. A reference has been made to the order dated 30.1.2003 directing all the accused to remain present on the next date of hearing, i.e., 07.2.2003, for framing of charge. Reference has been made to the orders passed wherefrom it is clear that the accused persons had sought adjournment on the ground that writ petitions were pending before the High Court. It is also put forth that certain applications were filed by the accused persons seeking longer date by giving personal reasons and sometimes on the ground of non- availability of the counsel. It is the case of the prosecution that because of adjournments, the charges could not be framed within a reasonable time but ultimately, on 15.12.2007, the charges were framed. The factual narration would further reveal that certain miscellaneous applications were filed and they were ultimately dismissed on 20.2.2008. On 04.4.2009, an order was passed requiring the counsel for the accused to submit admission and denial of the documents as per the description mentioned in the application under Section 294 of the Code of Criminal Procedure. Some time was consumed to carry out the said exercise. The matter was also adjourned as PW.1 had undergone an operation. On 26.8.2012, the trial Court recorded that the witness, Shetye, was unable to attend the Court and on the next date, i.e., 13.7.2012, the Prosecution Witness No. 1 stated that he was suffering from mental imbalance and was not in a position to depose and in view of the said situation, the Court directed the prosecution to lead evidence of other witnesses on the next date. Relying on the documents annexed to the counter

affidavit, it is contended that on most of the dates, the accused has taken adjournment on some pretext or the other.

8. In the body of the counter affidavit, various dates have been referred to and, computing the same, it has been stated that delay attributable to the accused is 15.5 years and the delay in bringing the matter in queue in the trial Court is one year. The rest of the delay is caused as the prosecution has taken time on certain occasions and on some dates, the learned trial Judge was on leave. In this backdrop, it has been contended that it is not a fit case, where this Court should quash the proceedings in exercise of powers under Article 32 of the Constitution of India.

9. An affidavit-in-rejoinder has been filed stating, inter alia, that applications were filed for release which were within the legal rights and hence, the delay cannot be attributed to the accused persons. It is urged that though number of orders have been passed, yet not a single witness has been examined. The allegation that the accused had gone on vacation has been seriously disputed. Emphasis has been laid on the order dated 18.3.2005 passed by the High Court clarifying the position that it had not granted stay and the pendency of the matter should not be a ground to adjourn the case. It is contended that the Investigating Officer is neither serious nor interested to see the progress of the trial but is desirous of delaying as he is aware that the case of the prosecution is totally devoid of merit. It is further stated that there has been gross and unexplained delay at each stage of the proceedings and hence, the same deserves to be quashed.

10. We have heard Dr. Rajeev Dhavan, learned senior counsel for the petitioner, and Mr. Sanjay V. Kharde, learned counsel for the respondent-State.

11. To appreciate the centripodal issue whether in such a case this Court, in exercise of powers under Article 32 of the Constitution, should quash the criminal trial on the ground of delay, it is requisite to state that in the present petition, we are only concerned with the time spent after 02.3.2001, i.e., the date of pronouncement of the judgment in the earlier criminal appeals, and further the factual matrix as already exposited shows how the delay has occurred. The factum of delay and its resultant effect are to be tested on the basis of the exposition of law by this Court.

12. In Abdul Rehman Antulay and others v. R.S. Nayak and another[2], a proponement was advanced that unless a time limit is fixed for the conclusion of the criminal proceedings, the right to speedy trial would be illusory. The Constitution Bench, after referring to the factual matrix and various submissions, opined that there is a constitutional guarantee of speedy trial emanating from Article 21 which is also reflected in the Code of Criminal Procedure. Thereafter, the Court proceeded to state as follows:-

> "83. But then speedy trial or other expressions conveying the said concept – are necessarily relative in nature. One may ask – speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind." After so stating, the Court

gave certain examples relating to a murder trial where less number of witnesses are examined and certain trials which involve large number of witnesses. It also referred to certain offences which, by their very nature, e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public officials, take longer time for investigation and trial. The Court also took note of the workload in each court, district, regional and State-wise and the strikes by the members of the Bar which interfere with the work schedules. The Bench further proceeded to observe that in the very nature of things, it is difficult to draw a time limit beyond which a criminal proceeding will not be allowed to go, and if it is a minor offence, not an economic offence and the delay is too long, not caused by the accused, different considerations may arise but each case must be left to be decided on its own facts and the right to speedy trial does not become illusory when a time limit is not fixed.

13. In the said case, in paragraph 86, the Court culled out 11 propositions which are meant to sub-serve as guidelines. The Constitution Bench observed that the said propositions are not exhaustive as it is difficult to foresee all situations and further, it is not possible to lay down any hard and fast rules. The propositions which are relevant for the present purpose are reproduced below:-

"(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.

xxx xxx xxx

(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.

It has been laid down therein that it is neither advisable nor practicable to fix any time-limit for trial of offences inasmuch as any such rule is bound to be qualified one.

14. In Kartar Singh v. State of Punjab[3], another Constitution Bench, while accepting the principle that denial of the right to speedy trial to the accused may eventually result in a decision to dismiss the indictment or a reversal of conviction, further went on to state as follows:-

> "92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors — (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay."

15. However, thereafter, certain pronouncements, namely, "Common Cause", A Registered Society through its director v. Union of India and others[4], "Common Cause", A Registered Society through its director v. Union of India and others[5], Raj Deo Sharma (supra) and Raj Deo Sharma (II) v. State of Bihar[6], came to the field relating to prescription of outer limit for the conclusion of the criminal trial and the consequences of such delay, being either discharge or acquittal of the accused. The controversy required to be addressed and, accordingly, the matter was referred to a Seven-Judge Bench in P. Ramchandra Rao v. State of Karnataka[7] and the larger Bench by the majority opinion, analyzing the dictum of A.R. Antulay's case and Kartar Singh's case and other legal principles relating to the power of the Legislature, the power of the Court and spectrums of jurisdiction, recorded certain conclusions. The conclusion Nos. 3 and 4, which are pertinent for the present case, are as under:-

> "(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.
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> 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 of terminate the same and acquit or discharge the accused." [Emphasis added]

16. At this juncture, we may notice few decisions to show how the principles laid down in Abdul Rehman Antulay (supra) and P. Ramachandra Rao (supra) have been applied by this Court either for the purpose of quashing of the prosecution or refusal to accede to the prayer in that regard. In Vakil Prasad Singh v. State of Bihar[8], the two-Judge Bench took note of factual scenario that the investigation was conducted by an officer who had no jurisdiction to do so; that the accused-appellant therein could not be accused of causing delay in the trial because he had successfully exercised his right to challenge an illegal investigation; that despite direction by the High Court to complete the investigation within a period of three months on 7.9.1990, nothing had happened till 27.2.2007 and the charge-sheet could only be filed on 1.5.2007 and, accordingly, opined that it was not a case where there was any exceptional circumstance which could be possibly taken into consideration for condoning the inordinate delay of more than two decades in investigation and, accordingly, quashed the proceedings before the trial court.

17. In Sudarshanacharya v. Purushottamacharya and another[9], a criminal prosecution was launched for commission of an offence for misappropriation and criminal breach of trust. On an application being filed for quashing of the proceedings, the High Court declined to quash the proceedings taking note of the fact that the accused had also played a role in the procrastination of the proceeding and directed that the case be heard on day-to-day basis. The matter travelled to this Court and a contention was advanced that it would be unfair to submit the accused-appellant to the agony of a trial after a lapse of long time. The Division Bench referred to the principles laid down in P. Ramachandra Rao (supra) and, further taking note of the conduct of the accused, declined to quash the proceedings.

18. At this stage, we think it apposite to advert to another aspect which is some times highlighted. It is quite common that a contention is canvassed in certain cases that unless there is a speedy trial, the concept of fair trial is totally crucified. Recently, in Mohd. Hussain alias Julfikar Ali v. State (Government of NCT of Delhi)[10], a three-Judge Bench, after referring to the pronouncements in P. Ramchandra Rao's case, Zahira Habibulla H. Shekh and another v. State of Gujarat and others[11], Satyajit Banerjee and others v. State of West Bengal and others[12], pointed out the subtle distinction between the two in the following manner:-

> "40 "Speedy trial" and "fair trial" to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in

> the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end." [Emphasis added]

19. It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective. In the case at hand, the appellant has been charge-sheeted under the Prevention of Corruption Act, 1988 for disproportionate assets. The said Act has a purpose to serve. The Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. The intendment of the legislature has an immense social relevance. In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism.

20. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. Therefore, the relief for quashing of a trial under the 1988 Act has to be considered in the above backdrop.

21. It is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, i.e., to keep the court vacant. It is also interesting to note that though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournment and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right. When we say so, we may not be understood to have said that the accused is debarred in law to file applications, but when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding. In the present case, as has been stated earlier, the accused, as alleged, had acquired assets worth Rs. 33.44 lacs. The value of the said amount at the time of launching of the prosecution has to be kept in mind. It can be stated with absolute assurance that the tendency to abuse the official position has spread like an epidemic and has shown its propensity making the collective to believe that unless bribe is given, the work may not be done. To put it differently, giving bribe, whether in cash or in kind, may become the "mantra" of the people. We may hasten to add, some citizens do protest but the said protest may not inspire others to follow the path of sacredness of boldness and sacrosanctity of courage. Many may try to deviate. This deviation is against the social and national interest. Thus, we are disposed to think that the balance to continue the proceeding against the accused-appellants tilts in favour of the prosecution and, hence, we are not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings. However, the learned Special Judge is directed to dispose of the trial by the end of December, 2013 positively.

22. The writ petition is accordingly disposed of.

.....J. [K. S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

March 15, 2013

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[1] (1998) 7 SCC 507
[2] (1992) 1 SCC 225
[3] (1994) 3 SCC 569
[4] (1996) 4 SCC 33
[5] (1996) 6 SCC 775
[6] (1999) 7 SCC 604
[7] (2002) 4 SCC 578
[8] (2009) 3 SCC 355
[9] (2012) 9 SCC 241
[10] (2012) 9 SCC 408
[11] (2004) 4 SCC 158
[12] (2005) 1 SCC 115

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