

NIRANJAN HEMCHANDRA SASHITTAL AND ANOTHER A

v.

STATE OF MAHARASHTRA  
(Writ Petition (Cr.) No. 50 of 2012)

MARCH 15, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.] B

*Constitution of India, 1950 - Article 32 - Powers under -  
Exercise of -Scope - Accused, a public servant, allegedly  
acquired disproportionate assets - Trial under the Prevention  
of Corruption Act - Prayer for quashing of the trial on the  
ground of delay - Held: No time limit can be stipulated for  
disposal of 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 gravity of the offence 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 - Also, on facts,  
the delay 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 - Accused  
precluded from advancing a plea that the delay in trial caused  
him colossal hardship and agony warranting quashment of  
the entire criminal proceedings - 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 - The balance to continue the proceeding  
against the accused tilts in favour of the prosecution -  
Jurisdiction under Article 32 of the Constitution accordingly  
not exercised to quash the proceedings - Prevention of  
Corruption Act, 1988 - s.13(2) r/w s.13(1)(e).* C  
D  
E  
F  
G

The Anti Corruption Bureau (ACB) filed an FIR

A against a public servant. Charge-sheet was lodged  
against him alongwith two old ladies before the Special  
Court. The offence alleged against the public servant was  
under Section 13(2) read with Section 13(1)(e) of the  
Prevention of Corruption Act, 1988. Allegations against  
B 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 was moved for quashing of  
the criminal proceedings. The High Court declined to  
interfere and, hence, all the accused persons approached  
C this Court in appeal, wherein the criminal case in respect  
of the old ladies was delinked and quashed, but the  
appeals preferred by the petitioner-public servant and his  
wife stood dismissed.

D It is asserted in the instant petition preferred by the  
public servant and his wife under Article 32 of the  
Constitution that after this Court disposed of the earlier  
criminal appeals, charges were framed nearly after expiry  
of seven years; that nearly after four years of framing of  
E charges, the Investigating Officer, was partly examined by  
the prosecution and, thereafter, the matter was adjourned  
on many an occasion; that despite the last opportunity  
being granted by the Special Judge, the Investigating  
Officer was not produced for examination; that the  
F examination-in-chief of PW-1 has not yet been completed  
and the other witnesses have not been produced for  
examination by the prosecution; that despite prayer made  
by the petitioner that the prosecution case ought to be  
closed because of its inability to produce the witnesses,  
G the Special Judge has not closed the evidence; and 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.

H The gravamen of grievance of the petitioners  
pertained to procrastination in trial, gradual corrosion of

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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 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 impaired their Fundamental Right enshrined under Article 21 of the Constitution.

The question which therefore arose for consideration was whether in the instant petition, this Court, in exercise of powers under Article 32 of the Constitution, should quash the criminal trial on the ground of delay.

Disposing of the writ petition, the Court

HELD: 1.1. 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. 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 accused 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.

- A The gravity of the offence in such a case 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. The system of good governance is founded on collective faith in the institutions. If corruptions 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. [Para 19] [785-A-G]

- 1.2. 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. 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. [Para 20] [785-H; 786-A-C]

- 1.3. 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. 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

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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. It cannot be 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, 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. 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. 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, the balance to continue the proceeding against the accused tilts in favour of the prosecution and, hence, this Court is not inclined to exercise the jurisdiction under Article 32 of the Constitution to quash the proceedings. However, the Special Judge is directed to dispose of the trial by the end of December, 2013 positively. [Para 21] [786-D-H; 787-A-C]

*Rajdeo Sharma v. State of Bihar* (1998) 7 SCC 507; 1998 (2) Suppl. SCR 130; *Abdul Rehman Antulay and Others v. R.S. Nayak and Another* (1992) 1 SCC 225; 1991 (3) Suppl. SCR 325; *Kartar Singh v. State of Punjab* (1994) 3 SCC 569; 1994 (2) SCR 375; "Common Cause", A Registered Society through its director v. Union of India and Others (1996) 4 SCC 33; 1996 (2) Suppl. SCR 196; "Common Cause", A Registered Society through its director v. Union of India and Others (1996) 6 SCC 775; 1996 (9)

- A **Suppl. SCR 296; Raj Deo Sharma (II) v. State of Bihar (1999) 7 SCC 604; 1999 (3) Suppl. SCR 124; P. Ramchandra Rao v. State of Karnataka (2002) 4 SCC 578; Vakil Prasad Singh v. State of Bihar (2009) 3 SCC 355; 2009 (1) SCR 517; Sudarshanacharya v. Purushottamacharya and Another**
- B **(2012) 9 SCC 241; Mohd. Hussain alias Julfikar Ali v. State (Government of NCT of Delhi) (2012) 9 SCC 408; Zahira Habibulla H. Shekh and Another v. State of Gujarat and Others (2004) 4 SCC 158; 2004 (3) SCR 1050 and Satyajit Banerjee and Others v. State of West Bengal and Others**
- C **(2005) 1 SCC 115; 2004 (6) Suppl. SCR 294 - referred to.**

**Case Law Reference:**

- |   |                                |                                    |
|---|--------------------------------|------------------------------------|
|   | <b>1998 (2) Suppl. SCR 130</b> | <b>referred to Para 3, 15</b>      |
|   | <b>1991 (3) Suppl. SCR 325</b> | <b>referred to Para 12, 16</b>     |
| D | <b>1994 (2) SCR 375</b>        | <b>referred to Para 14, 15</b>     |
|   | <b>1996 (2) Suppl. SCR 196</b> | <b>referred to Para 15</b>         |
|   | <b>1996 (9) Suppl. SCR 296</b> | <b>referred to Para 15</b>         |
| E | <b>1999 (3) Suppl. SCR 124</b> | <b>referred to Para 15</b>         |
|   | <b>(2002) 4 SCC 578</b>        | <b>referred to Para 15, 16, 17</b> |
|   | <b>2009 (1) SCR 517</b>        | <b>referred to Para 17</b>         |
| F | <b>(2012) 9 SCC 241</b>        | <b>referred to Para 17</b>         |
|   | <b>(2012) 9 SCC 408</b>        | <b>referred to Para 18</b>         |
|   | <b>2004 (3) SCR 1050</b>       | <b>referred to Para 18</b>         |
| G | <b>2004 (6) Suppl. SCR 294</b> | <b>referred to Para 18</b>         |

CRIMINAL APPELLATE JURISDICTION : Writ Petition  
(Criminal) No. 50 of 2012

H Under Article 32 of the Constitution of India.

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Dr. Rajeev Dhawan, Braj Kishore Mishra, Vijay Kumar, A  
Aparna Jha, Abhishek Yadav, Aditya S., for the Petitioners.

Sanjay V. Kharde, Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by B

**DIPAK MISRA, J.** 1. 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 C  
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 D  
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 E  
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, F  
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 G  
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 H

A 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  
 B 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  
 C 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*<sup>1</sup> and observed  
 D 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  
 E 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  
 F 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  
 G 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

H 1. (1998) 7 SCC 507.



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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

- A 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.
- B 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.

- C 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
- D 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,
- E Thailand and Singapore.

- F 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
- G 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
- H

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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

- A 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
- B 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
- C 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.

- D 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
- E of pronouncement of the judgment in the earlier criminal appeals, and further the factual matrix as already exposted 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.

- F 12. In *Abdul Rehman Antulay and Others v. R.S. Nayak and Another*<sup>2</sup>, a proponent 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,
- G 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:-

H <sup>2</sup>. (1992) 1 SCC 225.

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"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



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a decision to dismiss the indictment or a reversal of conviction, A  
further went on to state as follows:-

"92. Of course, no length of time is per se too long to pass B  
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 C  
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 D  
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, D  
*"Common Cause", A Registered Society through its director  
v. Union of India and Others*<sup>4</sup>, *"Common Cause", A  
Registered Society through its director v. Union of India and  
Others*<sup>5</sup>, *Raj Deo Sharma (supra) and Raj Deo Sharma (II) v.  
State of Bihar*<sup>6</sup>, 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*<sup>7</sup> and the larger F  
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 G  
for the present case, are as under:-

4. (1996) 4 SCC 33.
5. (1996) 6 SCC 775.
6. (1999) 7 SCC 604.
7. (2002) 4 SCC 578.

H

A "(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  
 B 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  
 C 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  
 D 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  
 E 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-  
 F 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."

G [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  
 H refusal to accede to the prayer in that regard. In *Vakil Prasad*



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*Singh v. State of Bihar*<sup>8</sup>, 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*<sup>9</sup>, 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*

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8. (2009) 3 SCC 355.

9. (2012) 9 SCC 241.

A (*Government of NCT of Delhi*)<sup>10</sup>, 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*<sup>11</sup>, *Satyajit Banerjee and Others v. State of West Bengal and Others*<sup>12</sup>, pointed out the subtle distinction between the two in the following manner:-

B "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]

10. (2012) 9 SCC 408.

11. (2004) 4 SCC 158.

H 12. (2005) 1 SCC 115.

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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 corruptions 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

- A 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

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hasten to add, some citizens do protest but the said protest A  
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 B  
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. C

B.B.B.

Writ Petition disposed of.