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Neutral Citation No. - 2023:AHC:218122

Court No. - 78

Case :- APPLICATION U/S 482 No. - 30646 of 2023
Applicant :- Randeep Singh Surjewala
Opposite Party :- State Of U.P.And Another
Counsel for Applicant :- Shivam Yadav,Aditya Yadav
Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard Sri S.G. Husnain, learned Senior Advocate, assisted by Ms. Sarita Gupta, Sri Ajay Kumar Kashyap, Sri Shivam Yadav and Sri Syed Mohd. Faisal, learned counsels for the applicant and Sri P.C. Srivastava, learned Additional Advocate General along with Sri Vikas Sahai, learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed for quashing of order dated 27.07.2023 and 10.08.2023, as well as for quashing of entire proceedings of case crime no.391 of 2000, (Sessions Case No. 187 of 2023) “State vs. Randeep Singh Surjewala”, pending before the court of learned Additional Sessions Judge/Special Judge (P.C. Act) Court No.1/Special Judge M.P./M.L.A. Court, Varanasi.

3. Learned Senior Advocate submitted that the applicant is innocent and he has been falsely implicated in this case. The first information report of this case was lodged in the year 2000 but the case was committed to the court of sessions in the year 2022 and thus, there has been long and undue delay in trial without there being any fault on the part of the applicant. Further, the refusal of prosecution to supply requisite crucial and pertinent documents impinges upon the applicant’s right to free and fair trial. Learned Senior Advocate submitted that 22 years delay in trial coupled with admission of prosecution regarding non-availability of

original records, amounts to violation of applicant's right and remedies under law. The law does not envisage the situation, where a person accused of an offence, has to argue on charge in a 22 years old case, without aid of crucial and pertinent documents. Learned Senior Counsel submitted that compelling the applicant to face trial in 22 years old case without allowing him to seek recourse to all other legal remedies available under law, violates right to free and fair trial enshrined under Article 21 of the Constitution of India. In a 22 year old trial, the legal recourse by an accused is heavily dependent on documentary evidence, which in this case, has been either purposely or inadvertently not made part of the investigation or charge-sheet. If crucial and pertinent documents are non-existent in a criminal trial, the same clearly strikes at the root of trial and would render further proceedings to be against the interest of justice and equity. It was submitted that in compliance of order dated 12.03.2023, passed by this Court, the trial court in its order dated 27.07.2023 has observed that no original document is available at the concerned police station and thus, the trial court is proceeding with trial on the basis of certified copies, which were prepared in the absence of original documents. As the prosecution has been started by complainant, the authenticity of the records provided to the applicant is doubtful. Further, the documents available are not clearly legible and it is not clear that on what basis the trial court, without verifying from the original record, has provided the typed copies of documents.

4. Learned Senior Advocate further submitted that 22 years have already elapsed since the alleged commission of offence and the original record is not available and it is a question to be considered that on what basis the trial court is issuing non-bailable warrants and forcing the applicant to face trial, without

there being any original record. In view of these facts there is high probability that concocted and fabricated evidence or material may be created for prosecuting the applicant/accused.

5. Learned Senior Counsel further submitted that alleged incident was shown of the year 2000 and charge-sheet has been filed in the year 2001 and that the applicant for the first time has been summoned by the Court in August, 2022 through counsel and the case was committed to the court of sessions in the year 2022. The applicant remained in anxiety and suspense of criminal trial pending against him for 22 years. At this stage, it is highly probable that witnesses might not have been remembering their own evidence after lapse of 20 years and that too without there being the availability of original record of investigation and evidence collected during investigation. The applicant was summoned for the first time only in August, 2022 and since then the applicant is pursuing his legal remedies either before this Court or before the Hon'ble Apex Court and thus, it could not be said that applicant is responsible for delay in trial. In this connection, learned Senior Counsel has referred the case of P. Ponnusami vs. State of Tamilnadu (AIR online 2022 SC 875) and A.R. Antuley vs. R.S. Nayak [1992 Vol. 1 SCC 225]. The unexplained delay of 22 years in compelling the applicant to trial without there being availability of original records itself infringes right of applicant to speedy trial and that the said delay is solely attributed to the prosecution. Learned Senior Counsel has placed reliance upon the following case laws:-

(i) S.G. Nain vs. Union of India (AIR 1992 SC 602).

(ii) Santosh De vs. Archana Goha and others (AIR 1994 SC 1229).

(iii) Jai Prakash Singh vs. State of U.P. [1996 Cr.LJ 2426 (Allahabad High Court)].

(iv) Pankaj Kumar vs. State of Maharastra (AIR 2008 SC 3077).

(v) Vakeel Prasad Singh vs. State of Bihar (2009 AIR SCW 1418).

6. It is further submitted that applicant was not present at the time of commission of the incident and the medical examination report of applicant would support that fact but the medical examination report of the applicant has not been supplied. In fact the applicant was a victim of police brutality and he has no role in the alleged offences. In case of Aminul Islam @ Amenur Molla vs. The State of West Bengal (Criminal Appeal No. 520 of 2018), it was held that medical evidence pertaining to nature of injuries sustained would prevail over the oral evidence of victim. Thus, the non-availability of original medical examination report of applicant, would cause prejudice to the applicant. Learned Senior Counsel has referred the case of D.K. Basu vs. State of West Bengal [(1997) 1 SCC 416], wherein, the Hon'ble Supreme Court laid down the guidelines regarding medical examination of applicant. The evidentiary as well as exculpatory value of arrest memorandum and medical examination report is increased due to the fact that the incident relates back to the year 2000 and therefore, without these documents and evidence, the applicant virtually has no defence to the charges against him. The deficiencies in the charge-sheet and investigation, coupled with delay of 22 years, would lead to a completely unfair trial and the same is violative of applicant's fundamental right to speedy trial under Article 21 of the Constitution of India. Learned Senior Counsel has referred following case law:

(i) Mihir Kumar Ghosh vs. State of West Bengal [(1998) SCC OnLine Cal 268],

(ii) Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Ors. [(1992) 1 SCC 225],

(iii) S.N. Chawdhury vs. State of West Bengal [(2000) SCC OnLine Cal 491] and

(iv) P. Ramachandra Rao vs. State of Karnataka [(2002) 4 SCC 578].

7. It was next submitted that one of the material issue is that in the final report under Section 173 (2) Cr.P.C., prosecution has not charged the applicant or any co-accused with aid of Section 120-B or 34 IPC, therefore, prosecution is required to prove that the applicant has committed the offence individually but there is no evidence to prove the same. Referring to provisions of Section 147, 332, 353, 336, 333, 427 IPC, Section 7 Criminal Amendment Act and section 3 Prevention of Damage to Public Property Act, it was submitted that there is no material to satisfy the ingredients of said offences and thus, the same are not made out against applicant.

8. Regarding maintainability of second petition under Section 482 Cr.P.C., with same prayer, learned Senior Counsel has placed reliance upon the case of Anil Khadkiwala vs. State (Govt. of NCT of Delhi) & Anr. [Criminal Appeal No.1157 of 2019-SC] and submitted that second petition for quashing of proceedings is maintainble.

9. Learned Additional Advocate General for State submitted that the prayer of applicant for quashing of proceedings has already been refused by this Court not only once but twice and thus, this third application with prayer of quashing of proceedings is not maintainable. Further, in view of allegations made in the first information report and material collected during investigation, it cannot be said that no prima facie case is made out against applicant. Regarding delay in trial, it was pointed out that the applicant was continuously being summoned by the trial court since the year 2001 but he did not appear before the Court and

ultimately the court had to issue non-bailable warrants through Commissioner of Police, Delhi and only then the applicant has appeared before the court and thus, the delay in trial cannot be attributed to the prosecution. It is further submitted that since last one year, the applicant is delaying the trial on one pretext or other and even for technical issue that some words in the copies of documents supplied to applicant under Section 207 Cr.P.C. are not legible, the applicant has approached this Court for several times, which clearly shows that the applicant wants to delay the proceedings of the trial. It was submitted that it is wholly false contention on behalf of applicant that no original document is available. Only regarding few documents, sought by the applicant, the trial court observed that the same are not available. The originals of all the relevant and material documents, relied by the prosecution, are available and copies of the same have already been supplied to the applicant but trial is being delayed on technical grounds like some documents are not legible. All the material documents are available in original. If any original document is not available, the secondary evidence would be admissible as per law and the effect of non-availability of the said document can be looked into by the trial court during trial.

10. Learned Additional Advocate General submitted that in fact the applicant-accused is delaying the proceedings of the trial on one pretext or another and that there is absolutely no basis to quash the impugned proceedings or to interfere in the impugned orders. There is sufficient and reliable material against applicant and the applicant-accused is himself responsible for delay in trial and that no case for quashing of impugned proceedings is made, particularly when the prayer of applicant for quashing of proceedings has already been refused by this court on merits. Referring to facts of the matter, it was further submitted that there

is no illegality or perversity in the impugned orders. The instant application under Section 482 Cr.P.C. has absolutely no substance and thus, liable to be dismissed.

11. I have considered rival submissions and perused the record.

12. At the out set, it may be mentioned that so far the prayer for quashing of proceedings of aforesaid case is concerned, the same was refused by this Court vide order dated 20.03.2023, passed in application under Section 482 Cr.P.C. No. 9093 of 2023, by granting liberty to the applicant-accused to seek discharge before the trial Court. The applicant-accused has challenged that order dated 20.03.2023 before the Hon'ble Apex Court by filing SLP No. 4791 of 2023. It appears from memo of the SLP, that the grounds raised before this Court for quashing of impugned proceedings in the instant application, were also raised before the Apex Court but except the direction for supply of legible copies of charge-sheet, the order dated 20.03.2023 was not interfered and thus, the prayer for quashing of impugned proceedings was impliedly refused. Again the prayer for quashing of impugned proceedings was refused by this Court vide order dated 12.07.2023, passed in Application under Section 482 Cr.P.C. No. 23896 of 2023.

13. The only new ground taken in this third petition is that the incident relates to the year 2000 and the trial could not commence so far and the relevant original original documents are not available and the refusal of prosecution to supply requisite crucial and pertinent documents impinges upon the applicant's right to free and fair trial. The main contention raised is that delay of 22 years in trial, coupled with admission of prosecution regarding non-availability of original records, amounts to violation of applicant's right and remedies under law and the said delay of 22

years in trial violates right to free and fair trial as enshrined under Article 21 of the Constitution of India.

14. In landmark judgment of A.R. Antulay (supra), the principles laid down by the Apex Court are that (i) fair, Just and reasonable procedure implicit in Article 21 creates a right in the accused to have a speedy trial in public Interest (ii) right to speedy trial encompasses all stages, viz. stages of Investigation, enquiry, trial, appeal, revision, retrial, (iii) the concerns underlying the right to speedy trial, from the point of view of the accused are not to subject the accused to unnecessary incorporation before Trial not to expose him to the anxiety, worry and expense of a prolonged investigation or trial, etc. (iv) in every case of alleged infringement of the right to speedy trial the first question to be put and answered is who is responsible for the delay after considering the extenuating circumstances like proceedings taken in good faith to vindicate the rights and interest of the parties, (v) in considering the aspect of delay and must have regard to all the attending circumstances including the nature of the offence the number of accused persons and witnesses, the work load of the Court concerned prevailing local conditions and so Including systematic delay, (vi) delay does not prejudice the accused, but inordinate delay may be taken as presumative proof of prejudice, (vii) ultimately the Court has to balance and weigh the several relevant factors and determine whether the right to speedy trial has been violated, (viii) when the Court comes to the conclusion that the right to speedy trial has been violated, generally, the charges or conviction should be quashed. But this is not the only course open; (ix) it is neither advisable nor practicable to fix any time limit for trial of offences. In case S.N. Cahudhary (supra), the Court reiterated the said principles and quashed the proceedings on ground of delay in trial. In that case the petitioner

was facing trial for the last 22 years and it was held that there is complete unanimity in judicial opinions in India that Article 21 of our Constitution confers a right to speedy trial of an accused. The sweep of Article 21 of the Constitution of India is wide enough to include all the stages since the accusation is levelled.

15. In case of Mihir Kumar Ghosh (supra), Hon'ble Apex Court held as under :

> *"Even under our Constitution though speedy trial is not specifically enumerated as a fundamental right. It is implict in the broad sweep and content of Article 21 as interpreted by the Supreme Court in Maneka Gandhi v. Union of India, reported in AIR 1978 SC 597. Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously the procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair and just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial is meant reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21".*

16. In case Santosh Dua (supra), the court held:.

> *"The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 CrPC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to*
>
> *keep the law at bay. That would mean the failure of the very system."*

17. In P. Ramachandra Rao vs. State of Karnataka (supra), the Court came to hold as under:-

"(1) The dictum in A.R. Antulay's 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's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket 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's 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 Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of 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."

18. In case of Pankaj Kumar (supra), the Apex Court reiterated the aforesaid principles and held in para 17 as follows:

''17. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been

> *denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial."*

19. In the case of Vakil Prasad Singh (supra), the Apex Court while reiterating the aforesaid principles, propounded the following principles:

> *"24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial."*

20. From the aforesaid case laws, it is apparent that speedy trial, which means reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined under article 21 of the Constitution of India. Right to speedy trial and fair procedure has passed through several milestones on the path of constitutional jurisprudence. In Maneka Gandhi v. Union of India [(1978) 1 SCC 248], the Court held that the several fundamental rights guaranteed by Part III required to be read as components of one integral whole and not as separate channels. The reasonableness of law and procedure, to withstand the test of Articles 21, 19 and 14, must be right and just and fair and not arbitrary, fanciful or oppressive, meaning thereby that speedy trial must be reasonably expeditious trial as an integral and essential part of the fundamental right of life and liberty under Article 21.

The Constitution Bench, in A.R. Antulay's case (supra), formulated certain propositions and held that fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. However, it was also observed that who is responsible for the delay and what factors have contributed towards delay are relevant factors and the attendant circumstances, including nature of the offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions must be kept in view and that each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage. In case of S.G. Nain (supra) there was issue of absence of sanction under section 197 CrPC and the prosecution was pending for almost fourteen years and the proceedings were quashed by the Apex Court. It was observed that in the facts of that case it was difficult rather impossible to hold a fair trial of the appellant after such a long time-lapse and it would be sheer waste of public time and money apart from causing harassment to the appellant. Thus, in that case it was not only delay in trial but several other factors, which persuaded the court to quash the proceedings. In case of Jai Prakash Singh (supra) the court found that there was no chance of a fair trial as the guilt of the applicant could be proved by the oral evidence only and such evidence, after the lapse of 12 years of the incident could hardly be produced before the trial Court and that the possibility of the production of fabricated evidence before the learned trial Court, after such a long gap, could not possibly be ruled out and the accused could also be highly prejudiced in his defence after a lapse of a period of about 12 years of the incident and thus, proceedings were quashed.

21. Keeping in view the aforementioned position, in the instant case it may be seen that the incident of the case in question took

place in the year 2000 and after investigation, charge-sheet was submitted in the year 2021. Perusal of order sheet of the committal court shows that the applicant-accused was being continuously being summoned since the year 2001, however, it is also clear that for about 20 years the court did not issue any coercive process to secure the presence of the applicant and ultimately on 17.08.2022 the court issued non-bailable warrants against the applicant through commissioner of police, and only thereafter, the applicant has appeared before the court on 14.09.2022 and case was committed to the court of Sessions on 04.11.2022. Since then the matter is being agitated by the applicant-accused on the issue like that complete and legible copies of the charge-sheet have not been supplied by the court and in relation to that issue matter has travelled up to the Apex Court. It is correct that by pursuing his legal remedies either before this Court or before the Hon'ble Apex Court, it could not be said that applicant is responsible for delay in trial, as observed in case of P. Ponnusami vs. State of Tamilnadu (supra) but the fact remain that after filing of charge-sheet, the applicant-accused was continuously being summoned for about 20-21 years but he did not appear before the court. After considering the aforesaid facts, the delay in trial could not solely be attributed to the prosecution or the court. As observed in case of P. Ramachandra Rao (supra), the guidelines laid down in A.R. Antulay's case are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula but their applicability would depend on the fact-situation of each case and that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The facts and circumstances of the case and several relevant factors as pointed out in A.R. Antulay's case have to be considered while deciding whether the trial or proceedings have become so inordinately

delayed as to be called oppressive and unwarranted. In none of the case law referred by the learned counsel for the applicant-accused, a time limit for disposal of a case has been formulated or prescribed. The delay in trial is a relevant factor but there is no such set proposition that a certain quantity of delay would be sufficient to quash the proceedings. The delay has to be considered in view of attending facts and circumstances of the case. There is no such settled legal preposition that if the trial has not been concluded within a specific period, the proceedings of the case have necessarily to be quashed. Recently, in case of Hasmukhlal D. Vora & Anr. V State of Tamil Nadu 2022 SCC Online SC 1732, the Apex Court observed that while inordinate delay in itself may not be ground for quashing of a criminal complaint, in certain cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint. Delay in trial is a relevant factor but it has to be considered in view of attending facts and circumstances of the case. In case of Bijoy Singh & Anr. Vs State Of Bihar (2002) 9 SCC 147, the Apex Court observed that inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. It was observed that if the delay is reasonably explained, no adverse inference can be drawn, but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. In the instant matter, considering the fact that the applicant-accused was being continuously summoned by the court since the year 2001 and ultimately the court issued non-bailable warrants against the applicant through commissioner of police, and only then the applicant has appeared before the court and thereafter case was committed to the court of Session, it could not be said that delay in commencement of trial is solely attributed to the prosecution,

rather it appears that delay in trial occurred as the applicant-accused did not appear before the court for about two decades, despite issuance of process against him. In view of these facts and circumstances, the impugned proceedings are not liable to be quashed on the ground of delay in commencement of trial.

22. Merely because the certain original documents sought by the accused, are not available, it could not be a ground to quash the impugned proceedings, particularly when the said documents are neither the part of report under section 173(2) CrPC nor the same are being relied by the prosecution. It appears from facts of the matter that there is sufficient material comprising original documents and statements of witnesses, to make out a prima facie case against the applicant-accused. The contention raised on behalf of applicant-accused that no original document pertaining the case is available, is misplaced and wholly false. The observation of the trial court in order dated 27.07.2023 that some original documents are not available at the police station, can not be construed to say that no original document pertaining to the case is available. That reference has been made by trial court only regarding the document, the copy of which was allegedly not legible. In fact the trial Court has clearly observed that all the legible copies of the documents relied by prosecution have been supplied to the applicant-accused. In compliance of order dated 12.07.2023 passed by this court, the trial court has recorded satisfaction that all the relevant copies have been supplied. In view of these facts and circumstances, no case for quashing of proceedings is made out on the ground of delay in trial or alleged non availability of original documents.

23. So far the contentions regarding factual aspects on merits are concerned, in view of allegations made in the first information report and the material collected during investigation, it could not

be said that no prima facie case is made against the applicant-accused. It is well settled that disputed questions of fact, cannot be adjudicated upon by this Court in exercise of power conferred under Section 482 Cr.P.C.

24. Regarding impugned order dated 10.08.2023, it was submitted that the dismissal of application filed by the applicant-accused under Section 91 Cr.P.C., is against facts and law and thus, liable to be set aside. Learned Senior counsel submitted that applicant has a right to rely upon documents, withheld by the prosecution, at the time of charge. The denial of supply of said documents strikes at the root of trial. In this connection, learned counsel has relied upon the case of V.K. Sasikala vs. State [(2012) 9 SCC 771] and Shakuntala vs. State of Delhi [Crl M.C. No.5536/06-DHC], and submitted that by impugned order, the applicant has been denied the copies of the statement of applicant as well as his medical examination report and other evidence, whether relied by prosecution or not, and it is a denial of fair trial to the applicant. The prosecution is under obligation to supply all documents, materials collected during course of investigation, to the applicant-accused, whether, relied by prosecution or not. After order dated 27.07.2023, the applicant was well within his right by invoking provisions of Section 91 Cr.P.C., requesting the trial court to provide copies of original documents of the case so as to verify the authenticity of the documents sought to be relied by the prosecution. Referring to case of Arjun Pandit Rao Kotkar vs. Kailash Kushan Rao Barondial and others [AIR 2020 SC 4908], it was submitted that the prosecution is under obligation to supply all documents before commencement of the trial. Learned Senior Counsel has also referred the following case laws:-

(i) AIR 2017 SC Nitya Dharmananda Vs. Shri Gopal S. Reddy.

(ii) Om Prakash Sharma Vs. C.B.I. reported in AIR SCW 2420

(iii) AIR 2020 SC 4908 Arjun Pandit Rao Kotkar vs. Kailash Kushan Rao Barondial and others.

(iv) AIR online 2022 SC 875 P. Ponnusami vs. State of Tamilnadu.

24. Learned A.A.G submits that at the instance of accused an application under Section 91 Cr.P.C. at the stage of charge is not maintainable. All the relevant copies have already been provided to the applicant in accordance with law under the provisions of Section 207 Cr.P.C., It was also pointed out that in application under Section 91 Cr.P.C., one of the prayer of applicant is to summon the entire record of the police station pertaining to crime no. 391 of 2000 and thus, such ambiguous prayer can hardly be allowed. It was submitted that there is no illegality or perversity in the impugned order.

26. Perusal of record shows that by order dated 10.08.2023, the trial Court has rejected an application filed by the applicant-accused under section 91 CrPC. The applicant-accused has filed an application under section 91 CrPC before the trial court, for summoning of following documents:

(i). Medical records / reports of applicant-accused,

(ii). Medical records / reports of all persons arraigned as accused,

(iii). Memorandum of Arrest of applicant-accused,

(iv). Statement of applicant-accused as recorded by the police,

(v). Documents and evidence relating to Dr Dayashankar Mishra Dayalu,

(vi). All documents present at the Varanasi Cantt police station in relation to crime No. 391 of 2000.

27. Before proceeding further it would be proper to quote the provisions of section 91 CrPC, which read as under:

> *"91. Summons to produce document or other thing.—*
>
> *(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.*
>
> *(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.*
>
> *(3) Nothing in this section shall be deemed—*
>
> *(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or*
>
> *(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."*

28. It is clear that the provisions under Section 91 of Cr.P.C provide for production of documents or other things if the same is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under Cr.P.C. It does not expressly provide as to who can invoke this provision, however, it implies that it can be invoked by the Court or the officer in-charge of the police station. The satisfaction regarding the necessity or the desirability of the Court or the police is sine qua non for invoking this provision. The production of document or other things is to be made before the Court if directed by the Court or before the officer if directed by the police officer. Therefore, the production of any document or a thing can be directed by the Court after being satisfied such production is necessary and desirable for the purpose of proper lawful conduction of investigation, inquiry, trial or other proceeding. In case of Om Prakash Sharma Vs. C.B.I (supra), it was observed that the powers conferred under Section 91 Cr.P.C. are enabling in nature aimed at arming the Court or any officer in charge of a Police Station concerned to enforce and to ensure the production of any document or other things necessary or desirable for the purposes of any investigation,

inquiry, trial or other proceeding under the Code, by issuing a summons or a written order to those in possession of such material. The language of Section 91 Cr.P.C. would, no doubt, indicate the width of the powers to be unlimited but the in-built limitation inherent therein takes it colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. The question, at the present stage of the proceedings before the Trial Court would be to address itself to find whether there is sufficient ground for proceeding to the next stage against the accused. If the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage of charge where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same.

29. In case of State of Orissa V Debendra Nath Padhy AIR 2005 SC 359, the Court held that;

> *"any document or other thing envisaged under Section 91 , can be ordered to be produced on findings that the same is necessary or desirable for the purpose of investigation, enquiry, trial or other proceedings under the Code and fore-most requirement of the section is about document being necessary or desirable and the necessity or desirable would have to be seen with reference to the stage when a prayer is made for production" and further held that, "If any document is necessary or desirable for defence of accused, the question of invoking Section 91 at the initial stage of framing of the charge would not arise since defence of the accused is not relevant at that stage."*

30. Thus, it was held that "so far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily

not come till the stage of defence. In the case of Nitya Dharmananda and Anr. v. Gopal Sheelum Reddy and Anr. (2018) 2 SCC 93 after referring to the judgment in the case of Debendra Nath Padhy (Supra), Apex Court has held in paragraph eight that;

> *"While ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge, but if the Court is satisfied that there is material of sterling quality, which has been withheld by the Investigator, the Court is not debarred from summoning or relying upon the same even if such document is not part of the charge-sheet."*

31. The law enunciated in case of Debendra Nath Padhy (Supra) has also been reiterated and approved by the Apex Court in case of M/s V.L.S. Finance Ltd Vs S.P. Gupta And Anr [Criminal Appeal No. 99 OF 2016 (@ SLP (Criminal) No. 801 Of 2016), decided on 05.02.2016. Thus, settled law is that ordinarily at the stage of framing of charge, the defence has no right to invoke Section 91 of the Cr.P.C., yet, at the appropriate stage, the Court is empowered to summon production of such documents, which is not part of the charge-sheet but of sterling quality, which has been withheld by the investigator to ensure fair and impartial trial.

32. In the instant case, the matter is to be heard on the point of charge. The case has taken several rounds up to this Court on the issue related to supply of copies under section 207 CrPC. Further, the prayer for summoning of some of the documents is quite vague, like prayer for summoning of documents and evidence relating to Dr Dayashankar Mishra Dayalu and all documents present at Varanasi Cantt police station in relation to crime No. 391 of 2000. As stated above, ordinarily at the stage of charge, defence evidence can not be considered and at the stage of charge, an application under section 91 CrPC is not maintainable at the instance of accused. Thus, the accused has no right to seek the production of alleged documents by invoking provisions of section 91 CrPC. Even otherwise, the trial court has observed that

as per the report of the police station, none of the documents, as sought to be summoned by the applicant, is available at the police station. Thus, there was no justification for making any direction to the police station to produce the said documents. The trial court has considered entire facts in correct perspective and dismissed the application by a reasoned order. There is no such material illegality or perversity in the impugned order so as to require any interference by this court by invoking inherent powers. Hence no interference is called in the impugned order dated 10.08.2023.

33. So far the impugned order dated 27.07.2023 is concerned, by that order the trial court has supplied legible copies of charge-sheet to the accused-applicant in compliance of order 12.07.2023 passed by this court. It appears from record that earlier while deciding the application under Section 482 Cr.P.C. No. 9093/ 2023 vide order dated 20.03.2023, this Court has directed that in case applicant files an application for discharge before the Trial court through counsel within a period of two weeks, the same shall be considered and decided expeditiously within a period of 6 weeks. The applicant challenged the said order before the Hon'ble Apex Court by filing S.L.P. No. 4791 of 2023, which was disposed of by the Hon'ble Apex Court vide order dated 17.04.2023, wherein, the Trial judge was directed to ensure that legible copy of the charge sheet is supplied to the petitioner and after such copies are supplied, the Trial judge would hear the petitioner's application for discharge in accordance with law. In compliance of the direction of Hon'ble Apex Court, the Trial Court has supplied copy of charge sheet to the counsel of applicant vide order dated 18.05.2023 but as the complete copies were not supplied, thus the applicant has filed a petition under Article 227 of Constitution of India (Petition No. 6850 of 2023)

before this Court, which was disposed of vide order dated 08.06.2023, wherein, this court has directed the trial court to supply entire copies of charge-sheet, as per directions of the Hon'ble Apex Court. In compliance of above stated order, copies were supplied to the applicant-accused but as per the learned counsel some of the copies were not legible and thus, the applicant has again approached this by filing an application under Section 482 Cr.P.C., (application 482 CrPC No.23896/ 2023), wherein by order dated 12.07.2023, in para No. 12, 13 & 14 this court has concluded as under:

> *"12. In view of aforesaid, it is directed that in case the applicant/ accused files an application within a period of eight days from today before the Trial Court, clearly specifying such copies supplied, which are not legible, the Trial Court shall consider and decide the same expeditiously and shall ensure that reasonably legible copies of such documents are supplied to the applicant/accused. The Trial Court shall record its satisfaction that such copies, supplied to the applicant/accused, are legible. It was pointed out that original case diary may be available with the Trial Court or with prosecution agency and if needed, copies of the relevant documents may be made from the same. The Trial Court shall ensure that the direction of the Hon'ble Apex Court as well as by this Court is complied with in letter and spirit.*
>
> *13. It is further directed that for a period of eight days from today and in case the applicant / accused moves the application, as stated above, within the aforesaid period, till the disposal of such application, no coercive process shall be adopted against the applicant/ accused in the aforesaid case.*
>
> *14. With aforesaid directions/ observations, the instant application is disposed of finally."*

34. It appears that in pursuance of the above order, the applicant-accused has moved an application before the Trial Court seeking legible and readable copies of the charge-sheet and consequently the required copies were supplied to the applicant-accused but again the grievance of applicant is that some of the copies supplied to applicant are still not legible and readable. It is apparent from the impugned order dated 27.07.2023 that the trial court has recorded it's satisfaction that the copies supplied to the applicant-accused are legible. There are no reasons to doubt the satisfaction recorded by the Trial Court. Merely because a few words are not legible or readable here and there, it can not be a

ground to again make any direction to the Trial Court in regard to the supply of copies. From the impugned order dated 27.07.2023 and the earlier orders passed by the Trial Court, it appears that the required legible and readable copies of report under section 173(2) CrPC (charge-sheet) have already been supplied to the applicant-accused. It appears that now this issue is being raised merely to delay the proceedings of the case.

35. In view of aforesaid, it is apparent that neither a case for quashing of impugned proceedings is made out nor the impugned orders call for any interference. The application under section 482 CrPC has no substance and thus, liable to be dismissed.

36. The application under section 482 CrPC is hereby **dismissed.**

Order Date :- 17.11.2023
Neeraj