REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2010
(Arising out of S.L.P. (Crl.) No. 6374 of 2010)

Sajjan Kumar .... Appellant (s)

Versus

Central Bureau of Investigation .... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Application for intervention is allowed.

2) Leave granted.

3) This appeal is directed against the order of the High Court of Delhi at New Delhi dated 19.07.2010 whereby the learned single Judge confirmed the order dated 15.05.2010 passed by the District Judge-VII/NE-cum-Additional Sessions Judge, Karkardooma Courts, Delhi in S.C. No. 26/10, RC SII 2005 S0024. By the said order,

the Additional Sessions Judge has ordered the framing of charges against the appellant for offences punishable under Section 120B read with Sections 153A, 295, 302, 395, 427, 436, 339 and 505 of the Indian Penal Code (hereinafter referred to as "IPC") and for the offence under Section 109 read with Sections 147, 148, 149, 153A, 295, 302, 395, 427, 435, 339 and 505 IPC, besides framing of a separate charge for offence punishable under Section 153A IPC and rejected the application for discharge filed by the appellant.

4) **Brief Facts:-**

(a) The present case arises out of 1984 anti-Sikh Riot cases in which thousands of Sikhs were killed. Delhi Police has made this case a part of FIR No. 416 of 1984 registered at Police Station Delhi Cantt. In this FIR, 24 complaints were investigated pertaining to more than 60 deaths in the area. As many as 5 charge-sheets were filed by Delhi Police relating to 5 deaths which resulted in acquittals. One supplementary charge-sheet about

SUPREME COURT OF INDIA
JUDGMENT

robbery, rioting etc. was also filed which also ended in acquittal. The investigation pertaining to the death of family members of Smt. Jagdish Kaur PW-1, was reopened by the anti-Riot Cell of Delhi Police in the year 2002 and after investigation, a Closure Report was filed in the Court on 15/22.12.2005.

(b) After filing of the Closure Report in the present case, on 31.07.2008, a Status Report was filed by the Delhi Police before the Metropolitan Magistrate, Patiala House Court, New Delhi. Pursuant to the recommendation of Justice Nanavati Commission, the Government of India entrusted the investigation to the Central Bureau of Investigation (hereinafter referred to as "CBI") on 24.10.2005. On receipt of the said communication, the respondent-CBI registered a formal FIR on 22.11.2005. The Closure Report was filed by Delhi Police on 15.12.2005/22.12.2005, when a case had already been registered by the CBI on 22.11.2005 and the documents had already been transferred to the respondent-CBI.

SUPREME COURT OF INDIA
JUDGMENT

(c) After fresh investigation, CBI filed charge-sheet bearing No. 1/2010 in the present case on 13.01.2010. After committal, charges were framed on 15.05.2010. At the same time, the appellant has also filed a petition for discharge raising various grounds in support of his claim. Since he was not successful before the Special Court, he filed a revision before the High Court and by the impugned order dated 19.07.2010, after finding no merit in the case of the appellant, the High Court dismissed his criminal revision and directed the Trial Court for early completion of the trial since the same is pending from 1984.

5) Heard Mr. U.U. Lalit, learned senior counsel for the appellant, Mr. H.P. Rawal, learned Additional Solicitor General for the respondent-CBI and Mr. Dushyant Dave, learned senior counsel for the intervenor.

6) **Submissions:**

(a) After taking us through the charge-sheet dated 13.01.2010, statements of PW-1, PW-2 and PW-10, order dated 15.05.2010 framing charges by the District Judge,

Karkardooma Courts, Delhi and the impugned order of the High Court dated 19.07.2010, Mr. Lalit, learned senior counsel for the appellant submitted that i) the statement of Jagdish Kaur is highly doubtful and later she made an improvement, hence the same cannot be relied upon to frame charge against the appellant; ii) reliance on the evidence of Jagsher Singh PW-2, who gave a statement after a gap of 25 years cannot be accepted; iii) the statement of Nirprit Kaur PW-10 is also not acceptable since the same was also made after a gap of 25 years of the occurrence; iv) other witnesses who were examined in support of the prosecution specifically admitted that they did not see the appellant at the time of alleged commission of offence; v) inasmuch as the charge has been framed after 25 years of occurrence, proceeding against the appellant, at this juncture, is violative of his constitutional right under Article 21; vi) after filing of the closure report by the Delhi Police, by following the procedure, the present action of the CBI conducting further re-

SUPREME COURT OF INDIA JUDGMENT

investigation and filing charge-sheet based on fresh and improved materials is impermissible in law; vii) follow-up action based on the recommendation of Justice Nanavati Commission is also impermissible at this juncture; viii) many remarks/observations made by the High Court are uncalled for and based on conjectures and surmises and also without there being any material on record. If those observations are not deleted from the order of the High Court, it would amount to directing the trial Judge to convict the appellant without proper proof and evidence.

(b) On the other hand, Mr. H.P. Rawal, learned Additional Solicitor General appearing for the CBI submitted that in view of categorical statement by the victims before Justice Nanavati Commission and its recommendation which was deliberated in the Parliament, the Government of India took a decision to entrust further/re-investigation in respect of 1984 anti-Sikh riots through CBI. According to him, the present action by the CBI and framing of charges against the appellant and

others is in consonance with Sections 227 and 228 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C."). He also submitted that at the stage of framing of the charges, the material on record has not to be examined meticulously; a *prima facie* finding of sufficient material showing grave suspicion is enough to frame a charge. He pointed out that there is nothing illegal with the order framing charge which was rightly affirmed by the High Court. He further submitted that the High Court has not exceeded in making observations and, in any event, it would not affect the merits of the case.

(c) Mr. Dushyant Dave, learned senior counsel for the intervenor, while reiterating the stand taken by the learned Additional Solicitor General supported the order of the District Judge framing charges as well as the order of the High Court dismissing the criminal revision filed by the appellant. He pointed out that it is not a case for interference under Article 136 of the Constitution of India. No prejudice would be caused to the appellant and he has

to face the trial. He further contended that the delay cannot be a ground for interference.

Relevant Provisions:

7) Before considering the claim of the parties, it is useful to refer Sections 227 and 228 of the Cr.P.C. which are reproduced below:

> "**227. Discharge.-** If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.
>
> **228. Framing of charge-** (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-
>
> (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;
>
> (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.
>
> (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and

> explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

It is clear that the Judge concerned has to consider all the records of the case, the documents placed, hear the submission of the accused and the prosecution and if there is "**not sufficient ground**" (Emphasis supplied) for proceeding against the accused, he shall discharge the accused by recording reasons. If after such consideration and hearing, as mentioned in Section 227, if the Judge is of the opinion that "**there is ground for presuming**" (Emphasis supplied) that the accused has committed an offence, he is free to direct the accused to appear and try the offence in accordance with the procedure after framing charge in writing against the accused.

Statements of PW-1, PW-2, PW-8 and PW-10

8) Mr. Lalit, learned senior counsel for the appellant pointed out that the prosecution, for framing the impugned charges, heavily relied on the statements of

Jagdish Kaur, Jagsher Singh and Nirprit Kaur. He also took us through their statements made at various stages which are available in the paper-book. It is true that Jagdish Kaur PW-1, in her statement under Section 161 Cr.P.C. dated 20.01.1985, did not mention the name of the appellant. Even in the affidavit dated 07.09.1985, filed before Justice Ranganath Misra Commission she has not whispered a word about the role of the appellant. According to him, for the first time i.e. in the year 2000, after a gap of 15 years an affidavit was filed before Justice Nanavati Commission, wherein she referred the name of the appellant and his role along with certain local Congress workers. According to Mr. Lalit, except the above statement in the form of an affidavit before Justice Nanavati Commission, she had not attributed anything against the appellant in the categorical statements made on 20.01.1985 as well as on 07.09.1985 before Justice Ranganath Misra Commission.

9) He also pointed out that even after submission of Justice Nanavati Commission's report and entrusting the investigation to CBI, she made a statement before the CBI officers at the initial stage by mentioning "that the mob was being led by Congress leaders". Only in later part of her statement, she mentioned that "she learnt that Sajjan Kumar, the Member of Parliament was conducting meeting in the area". She confirmed the statement in the form of an affidavit dated 07.09.1985 filed before Justice Ranganath Misra Commission as well as her deposition with regard to the appellant before Justice Nanavati Commission on 08.01.2002. No doubt, in the last part of her statement, it was stated that in the year 1984-85, the atmosphere was totally against the Sikh community and under pressure she did not mention the name of Sajjan Kumar. She also informed that she could not mention his name for the safety of her children.

10) The other witness Jagsher Singh, first cousin of Jagdish Kaur, in his statement recorded by the CBI on

07.11.2007 i.e. after a gap of 23 years, mentioned the name of the appellant and his threat to Sikhs as well as to Hindus who had given shelter to Sikhs. According to Mr. Lalit, this witness mentioned the name of the appellant for the first time before the CBI nearly after 23 years of the incident which, according to him, cannot be relied upon.

11) The other witness relied on by the prosecution in support of framing of charges is Nirprit Kaur PW-10. It is pointed out that she also made certain statements to the CBI after a gap of 23 years and she did not mention the name of the appellant except stating that one Balwan Khokhar who is alleged to be a nephew of Sajjan Kumar, came to her house for discussing employment for her nephew as driver.

12) The other statement relied on by the prosecution in support of framing of charges against the appellant is that of Om Prakash PW-8. He narrated that during the relevant time he had given shelter to a number of women and children of Sikh community including Jagdish Kaur

SUPREME COURT OF INDIA
JUDGMENT

PW-1. Mr. Lalit pointed out that in his statement, he did not even utter a word about the appellant but at the end of his statement on being asked, stated that he knew Shri Sajjan Kumar, Member of Parliament. However, he further stated that he did not see him in that mob or even in their area during the said period. In the last sentence, he expressed that he had heard from the people in general that Sajjan Kumar was also involved in the 1984 riots.

13) By pointing out the earlier statement of Jagdish Kaur PW-1, recorded by the CBI, her affidavit before Justice Nanavati Commission and the statement of Jagsher Singh PW-2, Nirpreet Kaur PW-10 and Om Prakash PW-8 before the CBI, Mr. Lalit submitted that there was no assertion by anyone about the specific role of the appellant except the bald statement and that too after 23 years. In such circumstances, according to him, the materials relied on by the prosecution are not sufficient to frame charges. According to him, mere suspicion is not sufficient for which he relied on the judgments of this Court in ***Union***

of India vs. ***Prafulla Kumar Samal and Another,*** (1979) 3 SCC 4 and ***Dilawar Balu Kurane*** vs. ***State of Maharashtra***, (2002) 2 SCC 135.

14) In ***Prafulla Kumar Samal (supra)***, the scope of Section 227 of the Cr.P.C. was considered. After adverting to various decisions, this Court has enumerated the following principles:

> "(*1*) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
>
> (*2*) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
>
> (*3*) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
>
> (*4*) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and

SUPREME COURT OF INDIA
JUDGMENT

> cons of the matter and weigh the evidence as if he was conducting a trial."

15) In ***Dilawar Balu Kurane (supra)***, the principles enunciated in ***Prafulla Kumar Samal (supra)*** have been reiterated and it was held:

> "**12.** Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see *Union of India* v. *Prafulla Kumar Samal*).
>
> **14.** We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against

> the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant."

16) It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. A Magistrate enquiring into a case under Section 209 of the Cr.P.C. is not to act as a mere Post Office and has to come to a conclusion whether the case before him is fit for

commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no *prima facie* evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 of Cr.P.C., the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted

power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. The test to determine *prima facie* case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

SUPREME COURT OF INDIA
JUDGMENT

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

18) With the above principles, if we discuss the statements of PW-1, PW-2, PW-10 as well as of PW-8, it cannot be presumed that there is no case at all to proceed. However, we are conscious of the fact that the very same witnesses did not whisper a word about the involvement of the appellant at the earliest point of time. It is the grievance of the appellant that the High Court did not take into account that the complainant Jagdish Kaur PW-1 had not named him in her first statement filed by way of an affidavit dated 07.09.1985 before Justice Ranganath Misra Commission nor did she named him in her subsequent statements made before the Delhi Police (Riots Cell) and in her deposition dated 08.01.2002 before Justice Nanavati Commission except certain hearsay statement. It is the stand of Jagdish Kaur PW-1, the prime prosecution witness, that apart from her statement dated 03.11.1984, she has not made any statement to Delhi Police at any stage. However, it is also the claim of the C.B.I. that the alleged statements of Jagdish Kaur PW-1, dated

20.01.1985 and 31.12.1992 are doubtful. Likewise, Nirprit Kaur PW-10, in her statement under Section 161 Cr.P.C., has denied having made any statement before the Delhi Police. At the stage of framing of charge under Section 228 of the Cr.P.C. or while considering the discharge petition filed under Section 227, it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and free to take a decision one way or the other.

Investigation by the C.B.I.

19) Learned Additional Solicitor General has brought to our notice the letter dated 24.10.2005 from Mr. K.P. Singh, Special Secretary (H) to Mr. U.S. Mishra, Director, Central Bureau of Investigation, North Block, New Delhi. A perusal of the said letter shows that in reply to the discussion held in the Lok Sabha on 10.08.2005 and the

Rajya Sabha on 11.08.2005 on the report of Justice Nanavati Commission of Inquiry into 1984 anti-Sikh riots, the Prime Minister and the Home Minister had given an assurance that wherever the Commission has named any specific individuals as needing further examination or re-opening of case the Government will take all possible steps to do so within the ambit of law. The letter further shows that based on the assurance on the floor of the Parliament, the Government examined the report of Justice Nanavati Commission, its recommendations regarding investigation/re-investigation of the cases against (a) Shri Dharam Das Shastri, (b) Shri Jagdish Tytler, and (c) Shri Sajjan Kumar. The letter further shows that the Government had decided that the work of conducting further investigation/re-investigation against the abovementioned persons as per the recommendations of Justice Nanavati Commission should be entrusted to the CBI. Pursuant to the said decision, Home Department forwarded the relevant records connected with the cases

against the abovementioned persons. It also shows those additional records/information required in connection with investigation are to be obtained from the Delhi Police. The materials placed by the CBI show that Justice Nanavati Commission submitted its report on 09.02.2005, its recommendations were discussed by the Lok Sabha on 10.08.2005 and the Rajya Sabha on 11.08.2005, Government of India asked CBI to inquire those recommendations on 24.10.2005 and the F.I.R. No. 416 of 1984 dated 04.11.1984 of Police Station, Delhi Cantt was re-registered by the CBI as case RC-24(S)/2005-SCU.I/CBI/SCR.I/New Delhi. Pursuant to the same, on 22.11.2005, investigation was taken up and it revealed that the accused persons committed offences punishable under Section 109 read with Sections 147, 148, 149, 153A, 295, 302, 396, 427, 436, 449, 505 and 201 IPC and accordingly filed the charge-sheet. It is relevant to note that no one including the appellant has not challenged appointment of CBI to inquire into the recommendations

SUPREME COURT OF INDIA JUDGMENT

made by Justice Nanavati Commission.

Status Report by Delhi Police

20) Mr. Lalit heavily relied on the status report of the Delhi Police and consequential order of the Magistrate. By pointing out the same, he contended that the CBI is not justified in re-opening the case merely on the basis of observations made by Justice Nanavati Commission. The following conclusion in the status report dated 31.07.2008 filed by the Delhi Police was pressed into service.

> "From the investigation and verification made so far it was revealed that:-
>
> (a) There is no eye-witness to support the version of the complaint of Smt. Jagdish Kaur.
>
> (b) The complaints and affidavits made by Smt. Jagdish Kaur are having huge contradictions.
>
> (i) In her first statement recorded by local police during the investigation, she did not name any person specifically and also stated that she could not identify any one among the mob.
>
> (ii) She even did not name Shri Sajjan Kumar in her statement recorded by the I.O. of the Spl. Riot Cell after a gap of seven years.

(iii) She suspected the involvement of one Congress Leader Balwan Khokhar in these riots but she had not seen him personally. She was told by one Om Prakash who was colleague of her husband, about the killing of her husband and son.

(iv) In the statement recorded on 22.01.1993 under Section 161 Cr.P.C. during the course of further investigation, the witness Om Prakash stated that he had seen nothing about the riots. Jagdish Kaur stayed at his house from 01.11.1984 to 03.11.1984 but she did not mention the name of any person who was indulged in the killing of her husband and son."

It is seen from the report that taking note of lot of contradictions in the statement of Jagdish Kaur PW-1 before the Commissions and before different investigating officers and after getting legal opinion from the Public Prosecutor, closure report was prepared and filed before the Metropolitan Magistrate, Patiala House Courts, New Delhi on 31.07.2008. It is further seen that before

accepting the closure report, the Magistrate issued summons to the complainant i.e, Smt. Jagdish Kaur number of times and the same were duly served upon her by the officers of the Special Riot Cell but she did not appear before the Court. In view of the same, the Magistrate, on going through the report and after hearing the submissions and after noting that the matter under consideration is being further investigated by the CBI and the investigation is still pending and after finding that no definite opinion can be given in respect of the closure report, without passing any order closed the matter giving liberty to the prosecution to move appropriate motion as and when required.

21) Mr. Lalit, learned senior counsel, by placing copy of the final report under Section 173 Cr.P.C. by Delhi Police as well as endorsement therein including the date on which the said report was filed before the Court, submitted that the action taken by Delhi Police cannot be faulted with. In other words, according to him, till the

entrustment of further investigation by the CBI, Delhi Police was free to proceed further and there is no error in the action taken by the Delhi Police. In view of the order dated 31.07.2008 of the Magistrate, declining to give definite opinion on the closure report since the same was under further investigation by CBI, we are of the view that no further probe/enquiry on this aspect is required.

Delay

22) Learned senior counsel appearing for the appellant further submitted that because of the long delay, the continuation of the prosecution and framing of charges merely on the basis of certain statements made after a gap of 23 years cannot be accepted and according to him, it would go against the protection provided under Article 21 of the Constitution. Mr. Lalit heavily relied on para 20 of the decision of this Court in ***Vakil Prasad Singh*** vs. ***State of Bihar***, (2009) 3 SCC 355 which reads as under:

> "**20.** For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice

to note the gist thereof. These are: (*A.R. Antulay case*, SCC pp. 270-73, para 86)

(*i*) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;

(*ii*) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial;

(*iii*) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay?;

(*iv*) 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;

(*v*) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

(*vi*) ultimately, the court has to balance and weigh several relevant factors—'balancing test' or 'balancing process'—and determine in each case whether the right to speedy trial has been denied;

(*vii*) ordinarily speaking, where the court comes to a 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 and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(*viii*) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to

justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint;

(*ix*) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis."

After adverting to various decisions including ***Abdul Rehman Antulay and Ors.*** *vs.* ***R.S. Nayak & Anr.***, this Court further held:

> "**24.** It is, therefore, well settled that the right to speedy trial in all criminal persecutions (*sic* prosecutions) 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.
>
> **25.** 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."

Considering the factual position therein, namely, alleged demand of a sum of Rs.1,000/- as illegal gratification for release of payment for the civil work executed by a contractor, a charge was laid against Assistant Engineer in the Bihar State Electricity Board and taking note of considerable length of delay and insufficient materials, based on the above principles, ultimately the Court after finding that further continuance of criminal proceedings pending against the appellant therein is unwarranted and quashed the same. Though the principles enunciated in the said decision have to be adhered to, considering the factual position being an extraordinary one, the ultimate decision quashing the criminal proceedings cannot be applied straightaway.

23) In ***P. Vijayan*** vs. ***State of Kerala and Another***, (2010) 2 SCC 398, this Court while considering scope of Section 227 of Crl.P.C. upheld the order dismissing the petition filed for discharge and permitted the prosecution to proceed further even after 28 years. In that case, from

1970 till 1998, there was no allegation that the encounter was a fake and only in the year 1998 reports appeared in various newspapers in Kerala that the killing of Varghese in the year 1970 was in a fake encounter and that senior police officers were involved in the said fake encounter. Pursuant to the said news reports, several writ petitions were filed by various individuals and organisations before the High Court of Kerala with a prayer that the investigation may be transferred to the Central Bureau of Investigation (CBI). In the said writ petition, Constable Ramachandran Nair filed a counter affidavit dated 11.01.1999 in which he made a confession that he had shot Naxalite Varghese on the instruction of the then Deputy Superintendent of Police (DSP), Lakshmana. He also stated that the appellant was present when the incident occurred. By order dated 27.01.1999, learned Single Judge of the High Court of Kerala passed an order directing CBI to register an FIR on the facts disclosed in the counter affidavit filed by Constable Ramachandran

Nair. Accordingly, CBI registered an FIR on 3-3-1999 in which Constable Ramachandran Nair was named as Accused 1, Mr Lakshmana was named as Accused 2 and Mr. P. Vijayan, the appellant, was named as Accused 3 for an offence under Section 302 IPC read with Section 34 IPC. After investigation, CBI filed a charge-sheet before the Special Judge (CBI), Ernakulam on 11.12.2002 wherein all the abovementioned persons were named as A-1 to A-3 respectively for an offence under Sections 302 and 34 IPC. The appellant - P. Vijayan filed a petition under Section 227 of the Code on 17.05.2007 for discharge on various grounds including on the ground of delay. The trial Judge, by order dated 08.06.2007, dismissed the said petition and passed an order for framing charge for offences under Sections 302 and 34 IPC. Aggrieved by the aforesaid order, the appellant – Vijayan filed Criminal Revision Petition No. 2455 of 2007 before the High Court of Kerala. By an order dated 04.07.2007, learned Single Judge of the High Court dismissed his criminal revision petition. The

said order was challenged by Mr. P. Vijayan before this Court. Taking note of all the ingredients in Section 227 of the Criminal Procedure Code and the materials placed by the prosecution and the reasons assigned by the trial Judge for dismissing the discharge petition filed under Section 227, this Court confirmed the order of the trial Judge as well as the order of the High Court. Though, there was a considerable lapse of time from the alleged occurrence and the further investigation by CBI inasmuch as adequate material was shown, the Court permitted the prosecution to proceed further.

24) Though delay is also a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution, ultimately it depends upon various factors/reasons and materials placed by the prosecution. Though Mr. Lalit heavily relied on paragraph 20 of the decision of this Court in ***Vakil Prasad Singh's case (supra)***, the learned Additional Solicitor General, by drawing our attention to the subsequent paragraphs i.e.,

21, 23, 24, 27 and 29 pointed out that the principles enunciated in ***A.R.Antulay's case*** (supra) are only illustrative and merely because of long delay the case of the prosecution cannot be closed.

25) Mr. Dave, learned senior counsel appearing for the intervenor has pointed out that in criminal justice "a crime never dies" for which he relied on the decision of this Court in ***Japani Sahoo*** vs. ***Chandra Sekhar Mohanty***, (2007) 7 SCC 394. In para-14, C.K. Thakker, J. speaking for the Bench has observed:

> "It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution solely on the ground of delay."

In the case on hand, though delay may be a relevant ground, in the light of the materials which are available before the Court through CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. As stated earlier, those materials

have to be tested in the context of prejudice to the accused only at the trial.

Observations by the High Court

26) Coming to the last submission about the various observations made by the High Court, Mr. Lalit pointed out that the observations/reference/conclusion in paragraphs 64, 65, 69, 70, 72, 73 and 50 are not warranted. According to him, to arrive such conclusion the prosecution has not placed relevant material. Even otherwise, according to him, if the same are allowed to stand, the trial Judge has no other option but to convict the appellant which would be against all canons of justice. He further submitted that even if it is clarified that those observations are to be confined for the disposal of the appeal filed against framing of charges and dismissal of discharge petition and need not be relied on at the time of the trial, undoubtedly, it would affect the mind of the trial Judge to take independent conclusion for which he relied on a judgment of this Court in ***Common Cause, A***

Registered Society vs. ***Union of India & Ors.*** (1999) 6 SCC 667. He pressed into service paragraph 177 which reads as under:

> "**177.** Mr Gopal Subramaniam contended that the Court has itself taken care to say that CBI in the matter of investigation, would not be influenced by any observation made in the judgment and that it would independently hold the investigation into the offence of criminal breach of trust or any other offence. To this, there is a vehement reply from Mr Parasaran and we think he is right. It is contended by him that this Court having recorded a finding that the petitioner on being appointed as a Minister in the Central Cabinet, held a trust on behalf of the people and further that he cannot be permitted to commit breach of the trust reposed in him by the people and still further that the petitioner had deliberately acted in a wholly arbitrary and unjust manner and that the allotments made by him were wholly mala fide and for extraneous consideration, the direction to CBI not to be influenced by any observations made by this Court in the judgment, is in the nature of palliative. CBI has been directed to register a case against the petitioner in respect of the allegations dealt with and findings reached by this Court in the judgment under review. Once the findings are directed to be treated as part of the first information report, the further direction that CBI shall not be influenced by any observations made by this Court or the findings recorded by it, is a mere lullaby."

JUDGMENT

On the other hand, learned Additional Solicitor General highlighted that these observations by the High Court are based on the materials placed and, in any event, it would not affect the interest of the appellant in the ultimate trial. In view of the apprehension raised by the learned senior counsel for the appellant, we also verified the relevant

paragraphs. In the light of the fact that it is for the trial Judge to evaluate all the materials including the evidentiary value of the witnesses of the prosecution such as Jagdish Kaur PW-1, Jagsher Singh PW-2, Nirpit Kaur PW-10 and Om Prakash PW-8, alleged contradictory statements, delay and the conduct of the Delhi Police in filing Status Report and on the basis of further investigation by the CBI, we clarify that all those observations of the High Court would not affect the ultimate analysis and final verdict of the trial Judge.

Conclusion:

27) In the light of the above discussion, we are of the view that it cannot be concluded that framing of charges against the appellant by the trial Judge is either bad in law or abuse of process of law or without any material. However, we clarify that *de hors* to those comments, observations and explanations emanating from the judgment of the learned single Judge, which we referred in para 26, the trial Judge is free to analyse, appreciate,

evaluate and arrive at a proper conclusion based on the materials being placed by prosecution as well as the defence. Inasmuch as the trial relates to the incident of the year 1984, we direct the trial Judge to take sincere efforts for completion of the case as early as possible for which the prosecution and accused must render all assistance. Interim order granted on 13.08.2010 is vacated. With the above observation and direction, the appeal is disposed of.

....J.
(P. SATHASIVAM)

....J.
(ANIL R. DAVE)

NEW DELHI;
SEPTEMBER 20, 2010.