ABDUL REHMAN ANTULAY ETC. ETC.

v.

R.S. NAYAK AND ANR. ETC. ETC.

DECEMBER 10, 1991

[K.N. SINGH, C.J., P.B. SAWANT, N.M. KASLIWAL, B.P. JEEVAN REDDY AND G.N. RAY, JJ.]

Constitution of India, 1950 :

Article 21—Right to speedy trial—Whether part of fair, just and reasonable procedure implicit in Article 21—Whether comprehensive of investigation, inquiry, trial, appeal, revision and retrial—Whether any outer limit could be prescribed for conclusion of the proceedings—Delay—Prosecution to justify and explain—Failure of accused to demand or insist upon speedy trial—Whether could result in denial—Relief—To be sought first in the High Court—Court to dispose on priority basis instead of staying the proceedings.

Code of Criminal Procedure, 1973 :

Sections 309 and 482—Right of the accused to speedy trial—Inordinate delay in conclusion of proceedings—Discretion of Court to quash proceedings having regard to attendant circumstances and relevant facts—Guidelines issued.

The petitioner in the first of the two Writ Petitions, was the Chief Minister of Maharashtra. The First Respondent has been taking steps to file criminal complaint against the petitioner since 1981 for misuse of office and various offences including corruption charges. Initially he was not successful for want of sanction from the Governor. After obtaining the required sanction from the Governor, the Respondent filed a complaint in the Court of Special Judge created under the Criminal Law Amendment Act, 1952, against the petitioner and some others. The main allegation was that the petitioner misused his office for collecting funds for certain trusts. The Special Judge took cognizance of the complaint and issued process. The petitioner appeared before the Special Judge and raised objections, as regards the jurisdiction of the Special Judge. Since the Special Judge overruled the objections, the petitioner approached th. High Court by way of Criminal Revision. In the meantime the State Government issued a notification designating a Special Judge to try the said case. The Criminal Revision was dismissed.

A Before the Special Judge, the petitioner raised fresh objections that the charges against him were groundless and also because he was an M.L.A. the taking of cognizance without the sanction of the Governor was not valid. He also prayed for postponing the hearing. The Special Judge took the view that without the sanction of the Governor, the case could not go on and accordingly he discharged the accused. The First Respondent B then approached this Court.

This Court took the view that M.L.A. was not a 'public servant' within the meaning of Section 21 IPC and so the question of sanction did not arise. In this view of the matter, it set aside the order of the Special Judge and directed that the trial should proceed from the stage at which C the petitioner was discharged. The case was transferred to High Court.

In the connected appeal preferred by the petitioner, this Court confirmed the view that cognizance could be taken even on private complaint.

D In pursuance of the directions of this Court, the Special case was assigned to a Judge of the High Court. The petitioner raised an objection that the case can be tried only by a Special Judge appointed by the Government under the Criminal Law Amendment Act, 1952 and that a High Court Judge had no jurisdiction to try such a case. This and other related objections were rejected by the High Court Judge. The petitioner E appealed against the said order and this Court dismissed the same.

Later, the proceedings were transferred to another Judge of the High Court, who framed 21 charges but declined to frame charges under 22 other heads proposed by the Respondent. The First Respondent ap- F proached this Court against the said order in so far as it declined to frame certain charges. This was allowed by this Court. Thereafter, the proceedings were transferred to another Judge of the High Court who framed as many as 79 charges and proceeded with the trial. A number of witnesses were examined. At that stage the petitioner approached this Court questioning the constitutional validity of Section 197 Cr. P.C. Two SLPs were G also filed by the petitioner, against the order framing charges and another order. On 29.4.88, this Court quashed all the proceedings in the said special case taken subsequent to the directions of this Court issued in 1984. This resulted in the proceedings becoming non-est after the First Respondent had practically completed his evidence recorded over a period of one year. The case had now to proceed in the Special Court in accordance with H Criminal Law Amendment Act, 1952. Since no progress was made in this

case, the First Respondent filed an application before this Court to treat the evidence recorded in the High Court as evidence in the Court of Special Judge. The said application also forms part of the present matters.

Meanwhile, an Advocate filed a Writ Petition before the High Court for a direction to the State Government to designate a Special Judge to try the said special case. The High Court pointed out that in view of this Court's direction it was necessary for the State Government to notify the appointment of a Special Judge. Accordingly the State Government appointed a Special Judge, and on 16.9.91 the Special Judge issued notices to the parties to appear before him for further steps. Subsequently bailable warrants were issued and the petitioner was granted bail.

In the other Writ Petition, the petitioner, an Advocate, was arrested on 6.7.1975 in connection with the murder of the then Railway Minister and an attempt to murder the then Chief Justice of India. In the first case, charge sheet was filed on 10.11.1975. In the second case the petitioner was convicted and sentenced to four years rigorous imprisonment. Though the petitioner obtained bail in his appeal before the High Court, he could not be released as he was also involved in the other case. On 30.3.1978, this Court granted bail to the petitioner and also ordered the transfer of the case from Patna to Delhi. Petitioner was produced in the Delhi Court and charges were framed in January, 1981. The trial took about 5 years in view of the large volume of evidence and several intervening interlocutory proceedings. The prosecution discharged certain witnesses. The petitioner filed an application for summoning some of the witnesses discharged. The trial Court having dismissed the application, the petitioner approached the High Court by way of a Revision Petition. The High Court admitted the Writ Petition and stayed all further proceedings in the trial; the stay continues.

Both the petitioners preferred the present Writ Petitions for quashing the criminal proceedings on the ground that their fundamental right to speedy trial has been violated.

The other matter, viz., the criminal appeal has been preferred by the State of Bihar against the judgment of the High Court of Bihar at Patna.

On behalf of the petitioners, it was contended that they were entitled to speedy trial, the right to which is derived from Article 21 of the Constitution; that to make the right to speedy trial meaningful, enforceable and effective, there ought to be an outer limit beyond which the

A continuance of the proceedings would be violative of Article 21; that since this Court has already prescribed such an outer limit in the case of children below the age of 16 years, a similar rule has to be evolved for general application.

The appellant-State contended that no proceeding could be quashed B on the ground of delay, and the Courts could always ensure speedy trial by issuing suitable directions to the trial court including orders of transfer to a Court where expeditious disposal could be ensured; that while the 'Right to speedy trial' in U.S.A. is express and unqualified, in India it is only a component of justice and fairness; that Article 21 could not be construed as to make a mockery of the directive principles and the C equality clause; that it is neither permissible nor possible to lay down any outer limit and that there was no precedent warranting such judicial legislation.

On behalf of Respondent-Union of India, it was contended that this Court should not lay down any parameters or guidelines concerning the D right to speedy trial, since the Code of Criminal Procedure contained enough provisions in this regard and Section 482 Cr.P.C. could serve as adequate remedy; and that the petitioners were themselves responsible for the delay in the trial of the cases and that they could not complain of infringement of their right to speedy trial.

E Dismissing the matters, this Court,

HELD : 1.1 Right to speedy trial is not enumerated as one of the fundamental rights in the Constitution of India, unlike the Sixth Amendment to the U.S. Constitution which expressly recognises this right. This F omission and the holding in *A.K. Gopalan's* case explains why this right was not claimed or recognised as a fundamental right flowing from Article 21 so long as *Gopalan* held the field. Once *Gopalan* was over-ruled in *R.C. Cooper* and its principle extended to Article 21 in *Maneka Gandhi*, Article 21 got unshackled from the restrictive meaning placed upon it in *Gopalan*. It came to acquire a force and vitality hitherto unimagnied, and with the G subsequent judicial pronouncements, right to speedy trial came to be recognised as implicit in Article 21 and now it constitutes a fundamental right of every person accused of a crime. [354-H; 355A-C]

1.2. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to H speedy trial is the right of the accused. The fact that a speedy trial is also

in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. [377-D]

1.3. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal revision and retrial. [377-E]

R.C. Copper **v.** *Union of India,* **[1970] SCR 564;** *Maneka Gandhi* **v.** *Union of India,* **AIR 1978 SC 592;** *Hussainara Khatoon (I)* **v.** *State of Bihar,* **[1979] 3 SCR 169;** *Hussainara Khatoon (II)* **v.** *State of Bihar,* **[1979] 3 SCR 393;** *Hussainara Khatoon (III)* **v.** *State of Bihar,* **[1979] 3 SCR 532;** *State of Bihar* **v.** *Uma Shankar Ketriwal & Ors.,* **[1981] 2 SCR 402;** *Khadra Paharia* **v.** *State of Bihar,* **[1983] 2 SCC 104;** *State of Maharashtra* **v.** *Champalal Punjaji Shah,* **[1982] 1 SCR 299;** *T.V. Vatheeswaran* **v.** *State of Tamil Nadu,* **[1983] 2 SCR 348;** *S. Guin & Ors.* **v.** *Grindlaya Bank Ltd.,* **[1985] Suppl. 3 SCR 818;** *Sheela Barse & Ors.* **v.** *Union of India & Ors.,* **[1986] 3 SCR 562;** *Raghubir Singh & Ors.* **v.** *State of Bihar,* **[1986] 3 SCR 802;** *Rakesh Saxena* **v.** *State,* **[1987] 1 SCR 173;** *Srinivas Gopal* **v.** *Union Territory of Arunachal Pradesh,* **[1988] Suppl. (1) SCR 477;** *T.J. Stephen & Ors.* **v.** *Parle Bottling Co. (P) Ltd. & Ors.,* **[1988] 3 SCR 296;** *State of A.P.* **v.** *P.V. Pavithran,* **[1990] 2 SCC 340, relied on.**

A.K. Gopalan **v.** *State of Madras,* **[1950] SCR 88, referred to.**

2. As a matter of fact, right to speedy trial is embedded in the statutory law of this country. Sub-sections 1 and 2 of Section 309 Cr.P.C. and sub-sections 1 and 1A of Section 344 Cr.P.C. are to be read with Section 482 Cr. P.C. which saves the inherent powers of the High Court. The latter provision recognises the power of the High Court to pass appropriate orders "to prevent abuse of process of any court or otherwise to secure the ends of justice". In several cases, the High Courts and this Court have directed dropping or discontinuance of proceedings where such proceedings constituted an abuse of process of Court or where the ends of justice demanded such course of action. Thus even apart from Article 21, courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders. [365 B-H; 366-A,E]

A *Manchander* v. *State of Hyderabad,* [1955] 2 SCR 524; *Veerbhadra* v. *Ramaswamy Naicker,* [1959] SCR 1211; *Chajju Ram* v. *Radhey Shyam,* [1971] Suppl. SCR 172; *State of U.P.* v. *Kapil Deo Shukla,* [1972] 3 SCC 504, relied on.

3.1. Article 21 of the Constitution declares that no person shall be
B deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure, 1973. Several other enactments too contain many a procedural provision. After Maneka Gandhi, it can hardly be disputed that the 'law' in Article 21 has to answer the test of reasonableness and fairness inherent in Articles 14 and 19, that is to say, such law should
C provide a procedure which is fair, reasonable and just. Then alone, it would be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. It cannot be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable. It is both in the interest of the accused as well as the society that a criminal case is
D concluded soon. If the accused is guilty, he ought to be declared so. Societal interest lies in punishing the guilty and exoneration of the innocent but this determination must be arrived at with reasonable despatch—reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly,
E it is the obligation of the State to respect and ensure this right. [374D-H]

3.2. The very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more
F so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes. The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. [374-H; 375-A,B]

G *Madheshwardhari Singh* v. *State of Bihar,* AIR 1986 Patna 324; *State* v. *Maksudam Singh,* AIR 1986 Patna 38, approved.

Barker v. *Uningo,* (33 Lawyers Edn. 101); *Strunk* v. *United States,* (37 Lawyers Edn. 2nd, 56); *Bell* v. *Director of Prosecution, Jamaica,* (1985) 2 AER 585; *United States* v. *Hawk,* (88 Lawyers Edn. 2nd, 640), referred to.

H

4.1. The concerns underlying the right to speedy trial are, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction; the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and undue delay has to be avoided as it may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise. [377 F-H]

4.2. It is usually the accused who is interested in delaying the proceedings. Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot however be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. Frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex-parte representation. [378 A-D]

4.3. 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 the offence, number of the accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on—what is called, the systemic delays. It is the obligation of the State to ensure a speedy trial and State includes judiciary as well. A realistic and practical approach should be adopted in such matters instead of a pedantic one. [378 D-E]

4.4. Each and every delay does not necessarily prejudice the accused. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be relevant. 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. [378-F]

U.S.V. Ewell, (15 Lawyers *Edn.* 2nd, 627, referred to.

5. It is not possible to lay down any time schedule for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the work-load in the particular court, means of communication and several other circumstances have to be kept in mind.

A Some offences by their very nature e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public servants and high public officials take longer time for investigation and trial. Then again, the workload in each court, district, region and State varies. In many places, requisite number of courts are not available. B In some places, frequent strikes by members of the Bar interfere with the work-schedules. Thus, it is not possible in the very nature of things and present day circumstances to draw a time limit beyond which a criminal proceeding will not be allowed to go. Even in the U.S.A., the Supreme Court has refused to draw such a line; nor such a line drawn in the United Kingdom. Wherever a complaint of infringement of right to speedy trial C is made, a court has to consider all the circumstances of the case and arrive at a decision whether in fact the proceedings have been pending for an unjustifiably long period. In many cases, the accused may himself have been responsible for the delay. In such cases, he cannot be allowed to take advantage of his own wrong. Each case must be left to be decided on its own facts. Hence it is neither advisable nor feasible to draw or prescribe D an outer time limit for conclusion of criminal proceedings. Also it is not necessary to do so for effectuating the right to speedy trial.

[375 G-H; 376A-C]

6. In a given case, if an accused demands speedy trial and yet he is not given one, it may be a relevant factor in his favour. But he is not E disentitled from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial. [376-F]

7. Normally, the only consequence flowing from an infringement of right to speedy trial is quashing of charges and/or conviction, as the case may be. But it is not the only order open to court. In a given case, the facts F including the nature of offence may be such that quashing of charges may not be in the interest of justice. After all, every offence, more so economic offences, those relating to public officials and food adulteration—are offences against society. It is really the society—the State—that prosecutes the offender. In cases, where quashing of charges/conviction may not be in the interest of justice, it shall be open to the court to pass such appropriate G orders as may be deemed just in the circumstances of the case.

[376 G-H; 377-A,B]

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

[379-C]

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9. An objection based on denial of Right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis. [379 G,H]

10.1. In the instant case (Writ Petition filed by the former Chief Minister of Maharashtra), until 1988 it was the petitioner who was raising several objections from time to time and getting the trial stayed. May be the very system was partly responsible for the somewhat unusual course of events. The respondent-complainant was certainly not to be blamed. [383-D]

10.2. On a consideration of the facts and circumstances this is not a fit case for quashing the criminal proceedings. The proper direction to make is to direct the expeditious trial on a day-to-day basis. Accordingly, the Special Judge designated for this case is directed to take up this case on a priority basis and proceed with it day-to-day until it is concluded. [384-B]

R.S. Nayak v. *A.R. Antulay* [1984] 2 SCR 495;

R.S. Nayak v. *A.R. Antulay* [1984] 2 SCR 914;

R.S. Nayak v. *A.R. Antulay* [1986] 2 SCC 716;

A.R. Antulay v. *R.S. Nayak* [1988] 2 SCC 602, referred to.

11.1. In the other Writ Petition, it is clear from the material on record that the prosecution cannot be held guilty of any delaying tactics or for that matter, for causing any delay in the conduct of trial from the date the criminal proceedings were transferred to Delhi. The proceedings of the court for this period, i.e. 1979 onwards, clearly establish that during this period the prosecution has always been anxious to go on with the trial. [384-D]

11.2. It is not proper to pronounce upon the correctness or otherwise of the incarceration of the petitioner subsequent to the grant of bail by Delhi High Court, or on the question whether the accused had a right to be released under section 167 Cr.P.C. after 90 days of his arrest and other similar questions in this writ petition. If indeed, any such illegalities have been committed, they will be taken into consideration by the court as and when the case comes up for final disposal. In this context, it is relevant to notice that the petitioner did not ask for quashing of the charges on

A account of said illegalities at the proper time. The proceedings cannot be quashed at this stage, on the said grounds particularly when the prosecution has completed its case after examining as many as 151 witnesses spread over a period of five years. [385-C,D]

11.3. It is difficult to express any opinion on the question whether the B C.B.I. was under an obligation to produce before the Court, certain evidence recorded by it favourable to the defence, for the reason that it is directly in issue in the pending criminal revision. Suffice to say that it does not furnish a valid ground for quashing the entire proceedings in the circumstances of the case. [385- F,G]

C 11.4. On a consideration of all the circumstances of the case, quashing of the charges and/or criminal proceedings at this stage would not be just and proper. The proper order to make in this case is to request the Delhi High Court to dispose of Criminal Revision Petition No. 191 of 1986 as early as possible, preferably within a period of two months. After the Criminal Revision Revision petition is disposed of, the trial judge will take D up the matter and proceed with it with as much expedition as possible in the circumstances and preferably on a day-to-day basis. [386-C,D]

12. The application for a direction to the effect that the evidence so far recorded in Special Case No. 24 of 1982 in the Bombay High Court shall be treated as evidence recorded in the Special Court which will now E try the said criminal case, is rejected. Giving such a direction at this stage would amount not only to review of this Court's order dated 29.4.1988, but would also run counter to the spirit of the said order. [340-E; 383-B]

A.R. Antulay v. *R.S. Nayak* [1988] 2 SCC 602, referred to.

F ORIGINAL JURISDICTION : Writ petition (Crl.) Nos. 833/90 & 268/87.

(Under Article 32 of the Constitution of India).

G WITH

Criminal Appeal No. 126 of 1987 and Crl. M.P. Nos. 8605 & 8623/91.

G. Ramaswamy, Rajinder Sachar, K.K. Sinha, P.P. Rao, Dr. N.M. Ghatate, G.B. Bhasme, R.K. Garg, U.R. Lalit and A.K. Sen, A.N. Sadsiyar, H S.K. Bisarai, R.L. Panjwani, R.S. Sharma, Ranjan Dwivedi, R.D. Ovalakar,

Rajendra Bansi, D.N. Bevdi, Nithin Pradhan, Pravin P. Rao, Ms. Hemantikawahi, M.N. Shroff, Pramod Sarup, A.K. Srivastava, Ms. A. Subhashini, M. Gangdava, S.V. Deshpande, B.B. Singh, A.S. Bhasme, Rajiv Dhawan, Ms. Rani Jethmalani, T.V.S. Narasimahchari, S.K. Nandy, Pravir Choudhary, Anip Sachthey, Ms. Kusum Chaudhary, Naresh K. Sharma, Ashok Mathur, M. Veerappa, K.R. Nambiar, S.K. Agnihotri, Mrs. Urmila Kapoor, D.N. Mukherjee, Kailash Vasdev, Raj Kumar Mehta, G.K. Bansal, Aruneshwar Gupta, R. Mohan, Gopal Singh, Mrs. Shobha Dikshit, Sinha, Das, Krishnamurthi Swami, Ms. Kamini Jaiswal, P.K. Manohar and R. Venkataramani for the appearing parties.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. It is more than 12 years since this Court declared in Hussain Ara Khatoon [1979] (3) S.C.R. 169 that right to speedy trial is implicit in the broad sweep and content of Article 21. Many a decision thereafter re-affirmed the principle. There has never been a dissenting note. It is held that violation of this right entails quashing of charges and/or conviction. It is, however, contended now before us that no such fundamental right flows from Article 21. At any rate, it is argued, it is only a facet of a fair and reasonable procedure guaranteed by Article 21 and nothing more. It is also argued that violation of this right does not result in quashing of the charges and/or conviction. It is submitted that the right, if at all there is one, is an amorphous one, a right which is something less than other fundamental rights guaranteed by our Constitution. On the other hand, proponents of the right want us to go a step forward and prescribe a time limit beyond which no criminal proceeding should be allowed to go on. Without such a limit, they say, the right remains a mere illusion and a platitude. Proponents of several view points have put forward their respective contentions. We had the benefit of elaborate arguments addressed by counsel on both sides of the spectrum. A large number of cases have been cited. Different view points have been presented. We shall refer to them at the appropriate stage. First, how these matters have come to be posted before the Constitution Bench.

2. Writ Petition No. 268/87 and a few other criminal appeals came up before a Division Bench when it was urged for the accused that a time limit be fixed for concluding all criminal proceedings. Without such a time limit, it was argued, the guarantee of right to speedy trial will remain a mere platitude. The Division Bench was of the opinion that the said contention "raises a very important constitutional question" which "is likely to arise more often in many cases and that, the decision on the question will have far-reaching consequences in tens of thousands of criminal cases pending in courts all over the

A country". Accordingly, the Bench directed the cases to be placed before a Constitution Bench. Subsequently, other cases too were added. Though several cases are posted before us, we indicated to the counsel that we will not enter into or investigate the factual aspects in all the cases but shall take the facts of only the first two cases. We indicated that we will dispose of these two cases, namely, W.P. No. 268 of 1987 (*Ranjan Dwivedi* v. *State*) and W.P. No. 833 of
B 1990 (*A.R. Antulay* v. *State*) and relegate the other cases to a Division Bench, after laying down the appropriate principles. We shall first notice the facts of these two cases before we advert to respective contentions of the parties.

3. *FACTS IN W.P. NO. 833/90*

C The petitioner in W.P. No. 833 of 1990, A. R. Antulay was the Chief Minister of Maharashtra from 1980 to January, 1982. The complainant/respondent R.S. Nayak moved the Governor of Maharashtra by his application dated September 1, 1981 requesting him to grant sanction to prosecute the accused-petitioner as required by Section 6 of Prevention of Corruption Act, 1947 (hereinafter referred to as '1947 Act') for various offences alleged to have been
D committed by him. Without waiting for the Governor's response on his application he filed a complaint in the Court of Chief Metropolitan Magistrate, Bombay on September 11, 1981 (Criminal Case No. 76 (Misc.)/81) against the accused and some others. His case was that the petitioner-accused was a public servant within the meaning of Section 21 I.P.C. and that he has committed
E several offences punishable under Sections 161, 165 I.P.C. and Section 5 of Prevention of Corruption Act, 1947 as also under Sections 383 and 420 I.P.C. read with Sections 109 and 120-B I.P.C. The learned Magistrate called upon the complainant to satisfy him as to how the complaint is maintainable without a valid sanction required by Section 6 of 1947 Act. After hearing the parties, he held that in absence of such a sanction, the complaint was not maintainable
F except with reference to offences under Sections 384 and 420 read with 109 and 120-B I.P.C. This order was questioned by the complainant in the High Court of Bombay by way of Special Criminal Application No. 1742 of 1981.

4. Meanwhile one Sri P.B. Samant filed a Writ Petition against the petitioner-accused alleging several acts of abuse of power including many of
G those alleged in the complaint filed by R.S. Nayak. The Writ Petition was allowed on 12th January, 1982 as a result of which the petitioner resigned from the office of the Chief Minister.

5. Special Criminal Application No. 1742 of 1981 filed by the complainant was dismissed by the High Court on April 12, 1982. Against the order, State
H of Maharashtra applied to this Court for Special Leave, which was declined on

July 28, 1982. On the same day, however, the Governor of Maharashtra granted sanction under Section 6 of 1947 Act in respect of offences set out therein. On this basis the complainant/respondent filed a fresh complaint in the Court of Special Judge, Bombay (created under the Criminal Law Amendment Act, 1952, hereafter referred to as '1952 Act') which was registered as Criminal Case No. 24 of 1982, against the accused and some other persons. The main allegation in this complaint was that the accused had embarked upon a scheme of aggrandisement involving obtaining of funds from public in the name of certain trusts and that he was misusing his office for collecting funds for such trusts. All his activity was characterised as flagrant abuse of his official position as Chief Minister. Several instances were also cited in support of the allegations. The Special Judge (Sri P.S. Bhutta) took cognizance of the same and issued process by directing bailable warrant to the accused. In response to the process issued, the accused appeared and raised two objections to the jurisdiction of the Special Judge viz. :

(i) the special Judge has no jurisdiction to take cognizance of offences mentioned in Section 6(1) (a) and (b) of 1952 Act (which include offences punishable under Sections 161 and 165 I.P.C. and Section 5 of 1947 Act) on the basis of a private complaint; and

(ii) where there is more than one Special Judge for an area, in the absence of a notification by the State Government specifying the local area under Section 7(2) of 1952 Act, Sri Bhutta had no jurisdiction to entertain Criminal Case No. 24 of 1982. (Section 7(2) provides that "every offence specified in Sub-section (1) of Section 6 shall be tried by the Special Judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.")

6. The Special Judge, Sri P.S. Bhutta over-ruled both the said objections whereupon the accused approached the Bombay High Court by way of Criminal Revision Application No. 510 of 1982. Pending the said Revision, the Government of Maharashtra issued a notification under Section 7(2) of the 1952 Act empowering Sri S.B. Sule, Additional Special Judge, to try the said Special Criminal Case No. 24/82. Criminal Revision Application No. 510 of 1982 came up for disposal before the Division Bench of Bombay High Court which dismissed the same on 7th March, 1983. The two learned Judges comprising the Division Bench delivered two separate but concurring opinions. With respect to first objection of accused (mentioned hereinbefore) they held that an investigation by a Police Officer under Section 5-A of 1947 Act

A was not a pre-condition to the Special Judge taking cognizance of an offence under Section 8 of 1952 Act and that, therefore, the Special Judge was competent to take cognizance of an offence mentioned in Section 6(1) upon a private complaint as well. With respect to the second objection, they did not think it necessary to discuss it inasmuch as the required notification was already issued by the Government of Maharashtra.

B

7. Sri R.B. Sule took up the matter and sought to proceed with it. At that stage, the petitioner accused moved two applications before him on 8th July, 1983 : one to discharge him on the ground that the charge against him is groundless and on the further ground that since he was a M.L.A., cognizance of offences without the sanction of the Governor was not valid and the other C for postponment of the hearing of the case. The learned Special Judge (Sri R.B. Sule) upheld the first contention of the accused and held that without the sanction of the Governor, the case cannot go on. Accordingly, he discharged the accused. Thereupon, the complainant approached this Court by way of a Special leave Petition as well as a Writ Petition. He also filed a Criminal Revision before the Bombay High Court against the very same order of Sri D R.B. Sule, which Revision Application was subsequently transferred to this Court. These matters were heard by a Constitution Bench presided over by D.A. Desai, J. and disposed of on February 16, 1984 (reported in 1984 (2) S.C.R. 495). Meanwhile, on a Special Leave Application filed by the accused against the decision of the Division Bench of the Bombay High Court aforesaid, this Court had granted Special Leave, which was registered as E Criminal Appeal No. 247 of 1983. This appeal was also heard by the same Constitution Bench and was disposed of on the same day i.e. 16th February, 1984 (the decision is reported at page 914 of 1984(2) S.C.R.). In the first-mentioned decision, this Court held that M.L.A. is not a 'public servant' within the meaning of Section 21 I.P.C. and hence question of sanction does not arise. F Accordingly, it set aside the order of Sri R.B. Sule discharging the accused and directed that the trial should proceed from the stage at which the accused was discharged. Having so held the Constitution Bench gave the following further direction :

> "The accused was the Chief Minister of a premier State—the State G of Maharashtra. By a prosecution launched as early as on September 11, 1981, his character and integrity came under a cloud. Nearly $2^1/_2$ years have rolled by and the case has not moved an inch further. An expeditious trial is primarily in the interest of the accused and a mandate of Article 21. Expeditious disposal of a criminal case is in the interest of both, the prosecution and the H accused. Therefore, Special Case No. 24 of 1982 and Special Case

No. 3/83 pending in the Court of Special Judge, Greater Bombay, Sri R.B. Sule are withdrawn and transferred to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court. On being so assigned, the learned Judge may proceed to expeditiously dispose of the cases preferably by holding the trial from day to day."

8. In its decision in Criminal Appeal No. 247 of 1983 (1984 (2) S.C.R. 914), this Court agreed with the Division Bench of the Bombay High Court that an investigation by a Police Officer under Section 5-A of 1947 Act is not a condition precedent for taking cognizance under Section 8 of 1952 Act and that cognizance can be taken by a Special Judge even on a private complaint. Thus, this court rejected the first of the two objections raised by the accused before the Special Judge-and rejected by him as well as the Division Bench of Bombay High Court. So far as the second objection raised by the accused is concerned, it was not dealt with by this Court. It merely took note of the observations made by the Division Bench of Bombay High Court in that behalf. We must reiterate that the entire judgment of the Constitution Bench deals only with the first objection and not with the second. On page 921 of the report, the court merely noticed the observations of the Division Bench of the Bombay High Court with respect to second objection and left it there.

9. In pursuance of the direction given by this court (in 1984 (2) S.C.R. 495 at 557) Special Criminal Case No. 24 of 1982 was assigned to Sri Justice S.N. Khatri of the Bombay High Court. Before the learned Judge, the accused raised an objection that the said Special case can be tried only by a Special Judge appointed by the Government under the 1952 Act and that a Judge of the High Court has no jurisdiction to try it. This and some other objections raised by the accused were rejected by the learned Judge, bound as he was by the aforesaid direction of this court. The order of Khatri, J. was questioned by the accused in this court but dismissed on 17th April, 1984 (reported in 1984 (3) S.C.R. 482). Later the proceedings were transferred to D.N. Mehta, J., who framed 21 charges but declined to frame charges under 22 other heads proposed by the complainant. The complainant came to this court against the said order in so far as it declined to frame certain charges which matter was ultimately disposed of (allowed) in 1986 (reported in 1986 (2) S.C.C. 716). The proceedings were then transferred to and taken up by P.S. Shah, J. of Bombay High Court, who framed as many as 79 charges and proceeded with the trial. A number of witnesses were examined spread over several months. While so, the accused approached this court again, under Article 32 of the Constitution (W.P. (Crl.) No. 542/86) questioning the constitutional validity of Section 197 Cr. P.C. S.L.P. No. 2519 of 1986 was also filed by him against the orders of

A Shah, J. framing 79 charges. Another S.L.P. (Crl.) No. 2518/86 was filed by him against yet another order of Shah, J. holding that the charges framed by him do not require the sanction under Section 197 Cr. P.C. Special Leave was granted in the above matters and further proceedings in the High Court stayed. The petition under Article 32 and the appeals arising from the said Special Leave Petitions were referred to and taken up by a Seven-Judge Bench of this B court. The Seven-Judge Bench, however, delinked W.P. No. 542/86 and S.L.P. No. 2518/86 from the other S.L.P. It directed those two matters to be heard separately. It heard only the appeal arising from S.L.P. No. 2519/86. By its judgment delivered on April 29, 1988, the Bench allowed the Appeal (arising from Special Leave Petition (Crl.) No. 2519 of 1986) and quashed all the proceedings in the said Special Case taken subsequent to the directions of this C court contained in its judgment dated 16th February, 1984 (1984 (2) S.C.R. 495). It directed the trial to proceed according to law, that is to say under the 1952 Act. The result of this judgment was that all the proceedings which were taken in the Bombay High Court in pursuance of this Court's direction dated 16th February, 1984—the complainant had practically completed his evidence recorded over a period of one year—became *non est* and the case had to be D proceeded with before the Special Court in accordance with the 1952 Act (The facts stated above are drawn from the decisions of this court).

10. The record does not disclose what happened after 29th April, 1988. It is not clear whether, and if so when, did the Bombay High Court send the record of the case to Special Judge and if it did so, to which Special Judge. Be E that as it may, the fact remains that no further progress was made in the case. It does not even appear that the case was taken up by any of the Special Judge appointed under the 1952 Act. On 31.5.1989, the respondent complainant filed an application (C.M.P. No. 1946 of 1990) before this court to treat the evidence received and recorded in Bombay High Court as evidence in the Court of F Special Judge. No orders were passed on this application until 1991, when it was tagged on to this matter before us. Meanwhile, an advocate of Bombay, Sri More, filed a writ petition in the Bombay High Court in March, 1990, being Writ Petition (Crl.) No. 281 of 1990 for a direction to the Government of Maharashtra to designate a Special Judge to try the said Special Case No. 24 of 1982. To this Writ Petition, petitioner-accused was impleaded as the first G respondent while R.S. Nayak (complainant) and the State of Maharashtra were impleaded as respondents 2 and 4 respectively. The Writ Petition came up before a Division Bench on 23.4.1990 and was disposed of with a direction. It would be appropriate to extract the relevant portion of the order to bring out the circumstances in which that direction was made :

H "In pursuance of the subsequent decision of the Supreme Court, it

is necessary for the State Government to notify the appointment of the special judge for conducting trial against the accused in accordance with the Criminal Amendment Act, 1952. Though the decision of the Supreme Court delivered on April 29, 1988 and almost two years had passed, the State Government has not appointed the Special Judge.

The petitioner is a practicing Advocate and has filed this petition on March 7, 1990 seeking direction to Government of Maharashtra to issue notification appointing a Special Judge to try the offences levelled against the accused by respondent No. 2-complainant. The petition was placed before us on March 12, 1990 and we directed notice to be issued to respondent No. 2 to explain whether the complainant desires to proceed with the trial before the Special Judge. Notice was also issued to State Government. On April 16, 1990 the complainant appeared before us and informed that he is desirous of continuing prosecution before Special Judge to be appointed by the State Government in accordance with the directions of the Supreme Court. In view of the statement, we admitted the petition. The complainant-respondent No. 2 and respondent No. 3—State of Maharashtra waived services of the rule. The rule could not be served on respondent No. 1, the original accused.

5. Today when the matter is called out Mr. Advocate General appearing on behalf of the State Government made statement that it is not necessary to postpone the hearing of this petition as the State Government is appointing Special Judge for conduct of trial and requisite notification would be published within a period of two months from today. The learned Advocate General made it clear that this appointment is made in consequence of the directions given by the Supreme Court in judgment reported in A.I.R. 1988 Supreme Court 1531. As the appointment is to be made in pursuance of the directions of the Supreme Court and as the Advocate General promises to make such appointment within a period of two months, it is not necessary to postpone the hearing of this petition for want of service on the accused. The statement of the Advocate General is sufficient to dispose of the petition and this statement in no way would cause any prejudice to the accused.

6. Accordingly, in view of the statement of the learned Advocate General, the relief sought in the petition no longer survives and the rule earlier issued stands discharged."

A Pursuant to the above direction, the Government of Maharashtra issued a notification dated 19.6.1990 designating a Special Judge to try the case.

11. Meanwhile, on 14.6.1990, petitioner filed this writ petition under Article 32 of the Constitution to quash Criminal Case No. 24 of 1982 on the ground of violation of his fundamental right to speedy trial.

B On 16.9.1991, the Special Judge issued notices both to the complainant and the accused to appear before him for further steps. On 7.10.1991, bailable warrants were issued to the petitioner accused and on 11.10.1991, he was granted bail.

C *FACTS IN W.P. NO. 268/87 :*

Sri L.N. Misra, the then Union Minister for Railways died in a bomb blast at the railway station, Samastipur on 2nd January, 1975. Investigation was taken up immediately by the Bihar State Police. On 10th January, 1975, C.B.I. took over the investigation, but Bihar C.I.D. continued to be associated with the D investigation. In the first week of February, 1975, two persons, Arun Kumar Misra and Arun Kumar Thakur were arrested. Arun Kumar Thakur's confessional statement was recorded under Section 164 Cr. P.C. on 21.2.1975. In or about May-June, 1975, however, the investigation by C.B.I. took a new turn. The investigation against the two Arun Kumars mentioned above was abandoned. Now, Anand Marg and its members became the object of investigation. E On 2.7.1977, Anand Marg was banned by the Government. The petitioner, Ranjan Dwivedi, was arrested on 6.7.1975. On 24.7.1975, one Vikram was arrested who turned approver. His confessional statement under Section 164 Cr. P.C. was recorded on 14.8.1975. On 16.9.1975, the C.B.I. requested the court that the accused originally arrested namely Arun Kumar Misra and Arun Kumar Thakur be discharged as further investigation has proved that they have F nothing to do with the crime. According to it, the crime was really committed by members of Anand Marg. On 10.11.1975, charge-sheet was filed in the court of Judicial Magistrate, Patna.

13. The petitioner was arrested on 6.7.1975 as stated above. He was said to be involved in the offence of attempt to murder the then Chief Justice of G India Sri A.N. Ray. That trial was taken up first at Delhi and concluded on 1.12.1976. Petitioner was found guilty and sentenced to four years rigorous imprisonment alongwith some others. Petitioner filed an appeal before the Delhi High Court and obtained bail but he could not be released, for he was also involved in L.N. Misra murder case. He was shifted to Patna Jail and produced before the Patna court on 19.12.1976. In the first week of January, 1977, the H

petitioner and other accused requested for supply of certain documents not supplied to them till then. The prosecution declined the request on the ground that they are not relying on those documents, which stand was upheld by the learned Magistrate. Petitioner filed a revision in the High Court of Patna against the order of the learned Magistrate, which was dismissed. Several interlocutory applications were filed before the learned Committing Magistrate and orders passed at this stage. Some of them pertained to engaging of counsel for the accused, their treatment in the jail, the difficulties created in the jail for them and so on.

14. On 30th March, 1978, petitioner was granted bail by this court and released a few days later.

At this stage, it appears, Vikram who had turned approver and had made a confessional statement, retracted his confession while in Patna jail. There is a good amount of controversy with respect to the circumstances in which he retracted his confession viz., whether it was done voluntarily or under pressure of the officers of the Government of Bihar. Be that as it may, a situation arose where the C.B.I. and the Bihar C.I.D. were freely trading charges of false implication against each other. The C.B.I. seems to have felt that it cannot prosecute its case properly at Patna and, therefore, the Attorney General of India moved this court for transferring the case to Delhi. This court, without going into the truth or otherwise of the allegations on the basis of which transfer was sought, ordered transfer. After such transfer, the learned Chief Metropolitan Magistrate, Delhi committed the case to Sessions on 25.5.1980. The case was made over to Sri D.C. Aggarwal, Additional Sessions Judge, Delhi. The accused was produced before him in March, 1980. Charges were framed in January, 1981 and trial commenced.

15. First few dates of hearing were taken up by miscellaneous applications including applications for bail and validity of the charges framed. Case had to be adjourned on some dates on account of non-availability of one or the other accused. Examination of PW-1 began in February, 1981. Recording of evidence of PW-1 (M.M. Srivastava)-approver-took a number of days. The evidence of Vikram, second approver, began in the last week of April, 1981. His evidence too took several days. We have been taken through the progress of the case from February, 1981 upto 16.4.1986 by which date, prosecution examined as many as 151 witnesses including the investigating officer and approvers. It is evident from the material placed before us that prosecution did not ever, during this period of five years, indulge in any delaying tactics nor was it ever guilty of somnolence or negligence. Because of the very volume of evidence and several intervening interlocutory proceedings, the trial took this

long. Be that as it may, on 16.4.1986, prosecution closed its case and discharged the remaining witnesses cited by it. On 1.5.1986, the defence counsel objected to discharge of witnesses by prosecution who were cited by it. The accused filed an application for summoning 13 witnesses out of them as court witnesses, before examining the accused under Section 313 Cr. P.C. The prosecution opposed the request saying that 13 witnesses named by the accused have either been won over by the accused or are not necessary for unfolding the prosecution case. On 21.8.1986, the trial court dismissed the application whereupon the accused approached the Delhi High Court by way of a Revision Petition. It was admitted on 17.9.1986 and all further proceedings in the trial stayed. The Revision Petition is still pending and the stay continuing.

16. A few more facts brought to our notice with respect to this case may be mentioned.

During the year 1978, the Government of Bihar requested Sri V.M. Tarkunde, a Senior Advocate to examine the facts of the case and submit his report. In February 1979, Sri Tarkunde submitted his report stating that the petitioner and other members of Anand Marg have been falsely implicated in the said case and that a fresh probe is necessary for uncovering the really guilty persons.

Against the order of the Patna High Court dismissing the petitioner's revision (with respect to supply of documents) the petitioner approached this court, which too dismissed the petition observing at the same time, that the said documents, though not relevant at the stage of committal, may be relevant at the stage of trial and their supply to the accused may be considered at the stage of trial. The prosecution says that all the documents asked for by accused have been supplied to them at the stage of trial.

In November, 1981, Sri D.C. Aggarwal, Additional Sessions Judge was transferred to Sales Tax Tribunal. One, Sri S.M. Aggarwal was posted in his place. The accused-petitioner says that inspite of Sri D.C. Aggarwal going to Sales Tax Tribunal, the prosecution sought to proceed with this case before him alone and refused to proceed before the succeeding Judge, Sri S.M. Aggarwal, notwithstanding the notification dated 9.12.1988 issued by the High Court designating Sri S.M. Aggarwal as the Judge competent to try the said case. Petitioner says that on 17th December, 1981, the said case was transferred to Sri D.C. Aggarwal (Sales Tax Tribunal) by the learned Sessions Judge at the instance of the prosecution, which action was challenged by the petitioner by way of writ petition. The matter ultimately reached this court which directed

that the case be withdrawn from Sri D.C. Aggarwal and assigned to another Sessions Judge at Delhi. There are conflicting versions as to why the prosecution wanted to proceed with the case before Sri D.C. Aggarwal. The prosecution says that according to orders of this court only a Judge specified by the Delhi High Court could try this case and the Delhi High Court had designated Sri D.C. Aggarwal to try it; until some other person was designated by Delhi High Court, says the prosecution, the case could go on only before Sri D.C. Aggarwal, wherever he was posted. On the other hand, the case of the accused-petitioner is that the prosecution was bent upon proceeding with the case before Sri D.C. Aggarwal alone because they found him favourably inclined towards their case and that the said insistence of the prosecution to proceed with the case before the Sales Tax Tribunal demonstrates its undue interest in the matter.

17. Sri Ranjan Dwivedi, petitioner in W.P. No. 268/87, an advocate practicing in this court, sought to argue the case himself. After hearing him for some time, we thought it to be in his interest, and advised him accordingly, to engage an advocate to appear on his behalf. Accordingly, Sri A.K. Sen, Senior Advocate appeared for him and argued the matter. We shall refer to his arguments at the appropriate stage. On a subsequent date, however, the petitioner represented that he does not want his case to be argued by Sri A.K. Sen further. The petitioner was still to reply to the arguments of learned Attorney General. Sri A.K. Sen too sought permission to withdraw from the case. He was accorded the permission.

During the hearing of the case, the petitioner applied for impleading the State of Bihar as a party to the writ petition. We allowed the application. The State of Bihar engaged Sri Ram Jethmalani, Senior Advocate, to appear in its behalf. Accordingly, the learned counsel appeared and argued the case on 19th November 1991. He took the stand that the case against the petitioner deserves to be quashed on the facts and circumstances of the case. He brought several facts to our notice. He was to continue on the next date of hearing.

However, on the next date of hearing i.e., November 22, 1991 Mr. Ram Jethmalani requested that he may be permitted to withdraw from the case inasmuch as the Government of Bihar has since instructed him not to argue the case on facts. He submitted that he cannot operate under any such restrictions. We permitted him to withdraw from the case. At this stage, the petitioner was yet to give his reply to learned Attorney General. The petitioner requested that since he is not in a position to represent his case properly he may be given the assistance of Sri Ram Jethmalani as Amicus Curiae. At our request, Sri Jethmalani graciously agreed to assist the court as amicus curiae and continued

A his arguments on facts. He brought several facts to our notice which according to him vitiate the entire proceedings and call for quashing of the proceedings by this court. We shall refer to them at the appropriate stage.

18. *SUBMISSION IN W.P. NO. 833/90.*

B Mr. P.P. Rao, learned counsel appearing for the petitioner-accused in W.P. No. 833/90 urged the following contentions :

(i) Right to speedy trial flows from Article 21, as held by several decisions of this court;

C (ii) To make the right to speedy trial meaningful, enforceable and effective, there ought to be an outer limit beyond which continuance of the proceedings will be violative of Article 21. This court has prescribed such an outer limit in the case of children below the age of 16 years; a similar rule must also be evolved for general application as has been done by the Full Bench of Patna High Court.
D Section 468 of Code of Criminal Procedure furnishes a guidance in the matter of drawing an outer line beyond which criminal trials should not be allowed to go. Though Section 468 applies only to minor offences its principle must be extended to major offences as well.

E (iii) Having regard to prevailing circumstances, a delay of more than seven years ought to be considered as unreasonable and unfair. The time taken by the investigation should be counted towards this seven years. In any event, a criminal proceeding, with all its stages, should not be allowed to go beyond ten years from
F the date of registration of crime. In the absence of an outer limit, right to speedy trial becomes an illusion.

(iv) Even *de hors* Article 21, Courts in India have been holding that a trial ought not to be allowed to go beyond a certain period. In many cases, this court has refused to direct re-trial or continuance
G of trial, where the proceedings have been pending for a long time, even where it was satisfied that order of acquittal was not sustainable in law. A re-trial ought to proceed with greater urgency. The delay which may not vitiate in the case of a trial would yet vitiate a retrial.

H (v) In this case, though a period of about ten years has elapsed, the

trial according to law is yet to begin. Particularly, after the decision of the Seven-Judge Bench of this Court in 1988, the complainant has been sleeping over the matter. He took no steps whatsoever to go on with the trial. After a period of three years and only when this writ petition was posted for hearing, did the complainant wake up and re-start the proceedings. The accussed-petitioner is being harassed in this matter.

(vi) The respondent-complainant is pursuing the petitioner out of political animosity. He belongs to B.J.P., whereas the petitioner belongs to Congress (I). Since the respondent's party is not in a position to face the petitioner politically, it is pursuing and persecuting him through court proceedings. In the recent general elections the petitioner has been elected to Parliament. His political career and future prospects are being marred by this litigation which is nothing but political vendetta.

(vii) In all the circumstances of the case, the Criminal Case against the petitioner ought to be quashed and the petitioner be set free to pursue his vocation.

19. Sri Ghatate, learned counsel for the complainant (R.S. Nayak) while not disputing the proposition that Right to speedy trial is implicit in Art. 21 of the Constitution, submitted that the conduct of the accused in this case disentitles him to any relief. According to him, it was the duty of the High Court of Bombay to have sent the record to the appropriate Special Judge pursuant to the judgment of the Seven-Judge Bench in April, 1988. The High Court took no such step. No notice was also received by the complainant from the Special Court. Ordinarily, he pointed out, when a case is remanded from a higher court to the trial court, the latter issues notices to the parties to appear before it on a date specified. In this case, however, no such notices were issued. He also submitted that in view of Sri Sule ceasing to be the Special Judge, the Government was bound to notify one of the Special Judges at Bombay as the Judge competent to try this case; this was not done and, therefore, no Special Judge was seized of the matter. In such a situation the complainant could not be found fault with for not proceeding with the trial. He submitted that until Sri More filed a writ petition and the Bombay High Court gave a direction, the Government did not issue a notification specifying the Special Judge for trying the said case. He also brought to our notice that the Bombay High Court had, in the said writ petition, asked the complainant whether he was willing to proceed with the prosecution and that he had made it expressly clear that he was willing to proceed with the case. He submitted that after the Special Judge

A was designated, the complainant moved him and the proceedings have now commenced. He also brings to our notice the fact that the complainant has filed an application as far back as 31.5.1989 for treating the evidence recorded in the High Court as the evidence before the Special Judge. In the circumstances, he submitted, it cannot be said that the complainant was remiss in proceeding with the prosecution or that he was sleeping over the matter. He emphasised the B conduct of the accused-petitioner in trying to delay and protract the proceedings throughout, for which purpose he invited our attention to certain passages in the decisions of this court referred to hereinbefore. He submitted that at no time had the complainant tried to prolong the matter and that he has always been ready and anxious to go on with the matter. He opposed the idea of prescribing a general time limit for conducting criminal proceedings. No C counter-affidavit has been filed by the complainant in the writ petition.

20. Sri Bhasme, learned counsel for the State of Maharashtra also did not dispute the proposition that the right to speedy trial flows from Art. 21, though he submitted that there ought not to be any outer limit prescribed by this court. He submitted that the State was in no way responsible for the delay, if any, in D proceeding with the case. The counsel, however, submitted that after the decision of Seven-Judge Bench of this court, the complainant ought to have moved either the High Court of Bombay or the Government for appropriate directions or for designating the Special Judge as the case may be, and that his inaction has remain unexplained.

E *SUBMISSION IN CR.A.NO. 126/87 :*

21. Sri Jethmalani, appearing for the State of Bihar in Criminal Appeal NO. 126 of 1987 presented the opposing point of view. While on the facts of the said case, he submitted that the quashing of the charges by the High Court F of Patna was the right thing to do-and this is the reason why we agreed to dispose of this appeal as well alongwith the aforesaid two writ petitions—he confined himself mainly to questions of law. His submissions are to the following effect :

> "1. The Constitution makers were aware of the Sixth Amendment G provisions in the Constitution of the U.S.A. providing in express terms the right of an 'accused' to be tried speedily. Yet this was not incorporated in the Indian Constitution. So long as *Gopalan* v. *State of Madras* held the field in India, only such speedy trial was available as the provisions of the Code of Criminal Procedure made possible. No proceeding could ever be quashed on the H ground of delay. On a proper grievance being made, or *suo moto*,

court could always ensure speedy trial by suitable directions to the trial court including orders of transfer to a court where expeditious disposal could be ensured. A

2. With the decision of this court in *Maneka Gandhi*, Art 21 received a new content. Procedure relating to punishment of crime must be fair, just and reasonable. Hoosein Ara Khatoon and later B decisions have spelt out a so-called 'Right to Speedy Trial' from Article 21. It is both a convenient and self-explanatory description. But it does not follow that every incident attaching to the Sixth Amendment right *ipso facto* is to be read into Indian Law. In the U.S.A., the right is express and unqualified. In India it is only a component of justice and fairness. Indian courts have to reconcile C justice and fairness to the accused with many other interests which are compelling and paramount.

(3) Article 21 cannot be so construed as to make mockery of directive principles and another even more fundamental right i.e., the Right of equality in Article 14. D

The concept of delay must be totally different depending on the class and character of the accused and the nature of his offence, the difficulties of a private prosecutor and the leanings of the Government. E

4. The court must respect legislative policy unless the policy is unconstitutional.

Statutes of limitation, limited though they are on the criminal side, do not apply to : F

(a) serious offences punishable with more than 3 years' imprisonment;

(b) all economic offences.

G

Corruption by high public servants is not protected for both these reasons.

5. Right to Speedy Trial is not a right not to be tried. Secondly, it only creates an obligation on the prosecutor to be ready to proceed to trial within a reasonable time; H

A That is to say without any delay attributable to his deviousness or culpable negligence.

6. The actual length of time taken by a trial is wholly irrelevant. In each individual case the court has to perform a balancing act. It has to weigh a variety of factors, some telling in favour of the accused, B some in favour of the prosecutor and others wholly neutral. Every decision has to be ad-hoc. It is neither permissible nor possible nor desirable to lay down an outer limit of time. The U.S. Supreme Court has refused to do so. Similar view is taken by our court. There is no precedent warranting such judicial legislation.

C The following kinds of delay are to be totally ignored in giving effect to the plea of denial of Speedy Trial :

(A) Delay wholly due to congestion of the Court calender, unavailability of Judges, or other circumstances beyond the control of the prosecutor. D

(B) Delay caused by the accused himself not merely by seeking adjournments but also by legal devices which the prosecutor has to counter.

E (C) Delay caused by orders, whether induced by the accused or not, of the court, necessitating appeals or revisions or other appropriate actions or proceedings.

(D) Delay caused by legitimate actions of the prosecutor e.g., getting a key witness who is kept out of the way or otherwise F avoids process or appearance or tracing a key documents or securing evidence from abroad.

7. Delay is usually welcomed by the accused. He postpones the delay of reckoning thereby. It may impair the prosecution's ability to prove the case against him. In the meantime, he remains free to G indulge in crimes. An accused cannot raise this plea if he has never taken steps to demand a speedy trial. A plea that proceedings against him be quashed because delay has taken place is not sustainable if the record shows that he acquiesced in the delay and never asked for a expeditious disposal. In India the demand rule must be rigorously enforced. No one can be permitted to complain H that speedy trial was denied when he never demanded it.

8. The core of 'Speedy Trial' is protection against incarceration. An accused who has never been incarcerated can hardly complain. At any rate, he must show some other very strong prejudice. The right does not protect an accused from all prejudicial effects caused by delay. Its core concern is impairment of liberty.

9. Possibility of prejudice is not enough. Actual prejudice has to be proved.

10. The plea is inexorably and inextricably mixed up with the merits of the case. No finding of prejudice is possible without full knowledge of facts. The plea must first be evaluated by the Trial Court.

SUBMISSIONS IN W.P. NO. 268/87 :

Sri Ashok Sen appearing for the petitioner in Writ Petition NO. 268 of 1987 supported the reasoning of Sri P.P. Rao and submitted that the prosecution against the petitioner, Ranjan Dwivedi, pending since more than 15 years ought to be quashed. The learned counsel emphasised the several features of the case, in particular :

(a) the allegations of false implication levelled by C.B.I. and the Bihar Police (C.I.D.) against one another;

(b) the circumstances in which the statement of approver Vikram was recorded, the way he was rewarded and his retracting of the same later;

(c) the report of Sri Tarakunde; and

(d) the manner in which the prosecution was conducted in the court including the deliberate protracting of proceedings.

He submitted that this is eminently a fit case where the charges and all the proceedings held so far ought to be quashed.

23. Sri Ram Jethmalani supported the contentions of Sr. A.K. Sen. He submitted that this prosecution has been pending since 1975 and has not concluded so far. For this delay, he submitted, the prosecution alone is responsible and not the accused. He brought the following facts to our notice :

1. Though the petitioner was arrested on 6.7.1975, he was not produced before the Patna court in this case till 19.12.1976. All this while, it was obtaining extensions of his remand without producing the petitioner before the Patna court and without even notice to him. Until he was produced in Patna court in December, 1976, the petitioner did not even know that he was also implicated in L.N. Misra murder case. The charge-sheet was filed only in December, 1975. Long prior thereto, the accused had become entitled to release under Section 167 Cr. P.C. but he was not aware of all these facts and, therefore, did not assert the said right. Even though he was granted bail by the Delhi High Court in the appeal preferred against his conviction in the case relating to Chief Justice Ray, he was not released because of his implication in L.N. Misra case. The petitioner continued to be in jail till 30.3.1978, when this court granted bail. The petitioner's incarceration from 21.1.1977 (the date of grant of bail by Delhi High Court) upto 30.3.1978, is illegal and unconstitutional. It vitiates the entire proceedings.

2. From the date of filing of the charge-sheet in December, 1975 till the case was transferred to Delhi in 1979, prosecution has been totally negligent in proceeding with the case. It has not explained what was it doing these three years—part of which period, the petitioner was imprisoned illegally.

3. The prosecutor is under an obligation to supply not only the documents relied upon by him but also all those documents which may be favourable to the accused as well. This obligation flows from Rule 16 of the Rules framed under the Advocates Act and from the very nature of the office and duties attaching to the office of prosecutor. Rule 16 aforesaid prohibits the prosecutor from suppressing the material favourable to the accused.

4. One Sri Ahuja was the main investigating officer for the C.B.I. It was he who had interrogated Arun Kumar Misra and Arun Kumar Thakur and got the confession of Arun Kumar Thakur recorded on 21st February, 1975. According to this confession, the said two accused at the instance of a particular political leader of Bihar committed the murder. These facts are established from the applications filed by him before the Patna court which are now part of the record of this writ petition. But then after the imposing of emergency in June, 1975, the case suddenly took a different turn. The original accused were dropped saying that they are innocent

and the entire focus now shifted to Anand Marg. In September, 1975 Ahuja applied to the court saying so expressly. In such a situation it is the duty of the prosecution to have placed both the versions before the court so that the court may be able to decide which is the correct version. It is not open to the prosecution to suppress the evidence with respect to its first version altogether and present the second version alone. This is totally unfair. In fact, the request for examining 13 witnesses (given up by the prosecution) was precisely to establish this very first version and the fact that for more than six months the prosecution has been pursuing Arun Kumar Misra and Arun Kumar Thakur as the real accused. Witnesses No. 12 and 13 of of the said 13 witnesses are those very accused. The petitioner wanted all of them to be examined as court witnesses so that both the prosecution and the defence will have an opportunity of cross-examining them. Court would then be in a position to discover the truth. This request was maliciously opposed by the prosecution which obliged the petitioner to approach the Delhi High Court. The order dated 13.2.1987 shows that the said Revision raise important questions of law and requires an in-depth consideration. In these circumstances, the delay of five years on account of pendency of Revision in High Court must be laid at the door of the prosecution since it is the direct consequence of the unfair opposition to the petitioner's reasonable request for summoning the said 13 witnesses as court witnesses. Learned counsel relied upon certain decisions to emphasise the duty of the prosecution to place the entire truth before the court. According to these decisions, counsel submitted, it was the duty of the prosecution in this case to place the earlier version and the evidence collected by them in that behalf also before the court. He too emphasised the strange spectacle of two State agencies accusing each other of false implication and frame-up.

5. The delay occasioned by the prosecution insisting upon prosecuting the accused only before Sri D.C. Aggarwal, (the delay is of three months), though short, indicates the prosecutorial malovolence. This vitiates the prosecution case and is an additional ground for quashing the proceeding.

24. The learned Attorney General, who appeared for the C.B.I., submitted in the first instance that this court should not lay down any parameters or guidelines concerning the right to speedy trial. According to him, the Code of Criminal Procedure contains enough provisions which serve as guidelines for

A ensuring a speedy trial. He requested that the cases placed before this Bench be disposed of on merits without laying down any general propositions. He submitted that Section 482 of the Code of Criminal Procedure is an adequate remedy. It can be invoked by an accused who has been denied a speedy trial. He says that the High Court has power to quash criminal proceedings if such a course is found necessary to secure the ends of justice. Unjustifiable delay in
B concluding a criminal case does amount to abuse of process of court and can be quashed under the said provision. He took us through the entire proceedings of this case, both in the Patna court and the Delhi court and submitted that the charge of delay against the prosecution is totally baseless and that the delay has in fact been caused by the accused themselves throughout. He submitted that the accused had been repeatedly filing several frivolous interlocutory applica-
C tions and praying for postponing the trial by adopting several tactics. For instance, very often one of the accused used to absent himself and then the other accused would say that the trial should not proceed in the absence of that accused. Even though they were in good health, they did not attend the court pleading ill-health. This fact has been certified by the jailor of Patna jail, more than once. Their counsel too was not cooperating with the court in going on
D with the trial five days a week. They were prepared to go on only on three days a week and that too not for the whole day. The evidence is too voluminous and there are thousands of documents. In the circumstances, he said, naturally the trial took quite some time. The material on record establishes clearly that the prosecution was always anxious to conclude the trial speedily and that in fact the trial proceeded at a record speed, wherein 151 witnesses were examined.
E It closed its case in 1986. Then the accused came forward with an application to examine certain witnesses who were wholly unnecessary and were accordingly given up by the prosecution. When it was rightly refused by the learned Sessions Judge, they went to the High Court and got all further proceedings and the trial stayed. Thus, it is the accused and the accused alone who have been
F protracting the trial and cannot, therefore, complain of infringement of their right to speedy trial, contended the learned Attorney General.

25. Mr. Chatterjee appearing for the petitioner in C.A. No. 3811/90 supported the contentions of Sri P.P. Rao, while Sri Rajeev Dhawan appearing for R.S. Nayak in C.M.P. No. 1946/90 generally supported the contentions of
G Sri Jethmalani. Miss Rani Jethmalani appearing for the intervenor, Mahila Dakshata Samiti, stressed in her written arguments the significance of this right from the stand-point of women.

26. Right to speedy trial is not enumerated as one of the fundamental rights in the Constitution of India, unlike the Sixth Amendment to the U.S.
H Constitution which expressly recognises this right. The Sixth Amendment

declares *inter alia* that 'in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial'. This is in addition to the Fifth Amendment which *inter alia* declares that "no person shall ..... be deprived of life", which corresponds broadly to Article 21 (and clause 1 of Article 31, since deleted). This omission and the holding in *A.K. Gopalan* v. *State of Madras* [1950] S.C.R. 88 probably explains why this right was not claimed or recognised as a fundamental right flowing from Article 21 so long as Gopalan held the field. Once *Gopalan* was over-ruled in *R.C. Cooper* (1970 S.C. 564) and its principle extended to Article 21 in *Maneka Gandhi* (1978 S.C. 597) Article 21 got unshackled from the restrictive meaning placed upon it in Gopalan. It came to acquire a force and vitality hitherto unimagined. A burst of creative decisions of this court fast on the heels of *Maneka Gandhi* gave a new meaning to the Article and expanded its content and connotation. While this is not the place to enumerate all those decisions, it is sufficient to say that the opinions of this court in *Hussainara Khatoon* cases decided in the year 1979, declaring that right to speedy trial is implicit in Article 21 and thus constitutes a fundamental right of every person accused of a crime, is one among them.

27. In *Gopalan*, this court held that the law relating to preventive detention is to be found in Article 22 of the Constitution and that Article 22 is a self-contained code in that behalf. It was also observed that the law contemplated by Article 21 need not answer the test of reasonableness in Article 19 since both the articles (21 and 19) constitute two different streams. In Maneka Gandhi, the observations in Gopalan with respect to Articles 21 and 19 constituting two different streams have been held to be either *obiter dicta* or wrong, as the case may be. It is pointed out that over the years this court has accepted the view that the Constitution-and in particular the several fundamental rights guaranteed by part III-should be read as an integral whole, with possible over-lappings of the subject-matter of what is sought to be protected by its various provisions. Beg, Chief Justice expressed the idea in the following words at page 648 of [1978] 2 S.C.R. :

> "Article dealing with different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial Justice (social, economic and political), Freedom (not only of thought, expression, belief, faith and worship, but also of association, movement, vocation or occupation as well as of acquisition and possession of reasonable property), of Equality (of status and

A of opportunity, which imply absence of unreasonable or unfair discrimination between individuals, groups and classes), and of Fraternity (assuring dignity of the individual and the unity of the nation), which our Constitution visualises. Isolation of various aspects of human freedom, for purposes of their protection, is neither realistic nor beneficial but would defeat the very objects of
B such protection."

Bhagwati, J. put the same idea in the following words :

"The law must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty'
C and there is consequently no infringement of the fundamental right conferred by Article 21 such law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in *R.C. Cooper's* case, *Shambhu Nath Sarkar's* case and *Haradhan Sahai's* case. Now, if a law depriving
D a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex hypothesi it must also be liable to be tested with reference to Article 14."

E The learned Judge pointed out the integral connection between Articles 14 and 21 in the following words :

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of
F equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of article 21 would not be satisfied."

G

28. This decision does establish in unmistakable terms that the law and procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Articles 19 and 14. It establishes that the procedure prescribed by law within the meaning of Article 21 must be right and just and fair and not arbitrary, fanciful or oppressive. It is this principle of
H fairness and reasonableness which was construed as taking within its purview

the right to speedy trial. In the first *Hussainara Khatoon* decision (1979 (3) S.C.R. 169) Bhagwati, J. observed as follows :

> "We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in *Maneka Gandhi* v. *Union of India*. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance 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 relief. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be "reasonable fair or 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 we mean reasonably expeditious trial, is an integral and essential part of the fundamental right of life and liberty enshrined in Article 21."

The learned Judge, however, posed a question which be left it to be answered at a later stage. The question posed was : What is the consequence of denial of this right? Does it necessarily entail the consequence of quashing of charges/trial? That question we shall consider separately but what is of significance is, this decision does establish the following propositions :

> (1) Right to speedy trial is implicit in the broad sweep and content of Article 21.
>
> (2) That unless the procedure prescribed by law ensure a speedy trial it cannot be said to be reasonable, fair or just. Expeditious trial and freedom from detention are part of human rights and basic freedoms and that a judicial system which allow incarceration of men and women for long periods of time without trial must be held to be denying human rights to such under trials.

Learned counsel for the accused particularly relied upon the following passage from the opinion of Bhagwati, J.

A "There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial
B is bad enough; how must worse could it be when the delay is as long as 3 or 5 or 7 or 10 years. Speedy trial is of the sense of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice."

29. In the second *Hussainara Khatoon* case, [1979] 3 S.C.R. 393, this court
C directed that the under-trial prisoners against whom charge-sheet has not been filed by the police within the period of limitation provided for in Section 468 cannot be proceeded against at all and released them forthwith. The reason being that any further detention of such persons would have been unlawful and violative of fundamental right enshrined in Article 21.

D In third *Hussainara Khatoon* case [1979] 3 S.C.R. 532, Bhagwati, J. observed :

"The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure
E speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court as the guardian of the fundamental rights of the people, as a sentinel on the *qui vive*, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the State
F which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial."

G 30. In *State of Bihar* v. *Uma Shankar Ketriwal & Ors.*, [1981] 2 S.C.R. 402 a report was lodged with the Police in April, 1960 that the respondent firm mis-appropriated a large quantity of G.C. sheets meant for distribution to quota holders. After investigation a Police Report was submitted in 1962 to the Magistrate who took cognizance of the case in January, 1963. Charges were framed against the respondents in September, 1967. Thereafter, the progress of
H the case was very slow. In 1979 respondents applied to the High Court for

quashing the proceedings initiated against them. The High Court quashed the proceedings on the grounds that the Police report did not disclose any evidence against the respondent and that the prosecution commenced in 1963 and still in progress in 1979 is an abuse of the process of the court and should not be allowed to go on further. The State appealed to this Court. This Court was inclined to agree with the State that the first ground given by the High Court may not be sustainable, but it affirmed the decision of the High Court on the second ground. This court observed :

> "We cannot lose sight of the fact that the trial has not made much headway even though no less than 20 years have gone by. Such protraction itself means considerable harassment to the accused not only monetarily but also by way of constant attention to the case and repeated appearances in court, apart from anxiety. It may well be that the respondents themselves were responsible in a large measure for the slow pace of the case inasmuch as quite a few orders made by the trial Magistrate were challenged in higher courts, but then there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage. In this view of the matter, we do not consider the present case a proper one for our interference inspite of the fact that we feel that the allegations disclose the commission of an offence which we regard as quite serious".

31. In *Khadra Paharia* v. *State of Bihar* [1983] 2 S.C.C. 104, this court re-affirmed the principle of *Hussainara Khatoon* case and declared that :

> "..... any accused who is denied this right of speedy trial is entitled to approach this Court for the purpose of enforcing such right and this Court in discharge of its constitutional obligation has the power to give necessary directions to the State Governments and other appropriate authorities for securing this right to the accused ....."

The Court also gave necessary directions to the Government of Bihar and High Court including a direction to create additional courts for speedy disposal of cases pending since long.

32. This Court considered the applicability of this right again in *State of Maharashtra* v. *Champalal Punjaji Shah,* [1982] 1 S.C.R. 299. Chinnappa Reddy, J. speaking for himself and A.P. Sen and Baharul Islam, JJ. affirmed the principle of *Hussainara Khatoon* and proceeded to observe :

A "In deciding the question whether there has been a denial of the right to a speedy trial the court is entitled to take into consideration whether the defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of the delay. The Court is also entitled to take into consideration whether the delay was unintentional, caused by B over-crowding of the court's docket or under-staffing of the Prosecutors. *Strunk* v. *United States* is an instructive case on this point. As pointed out in the first *Hussain Ara* case (supra), the right to a speedy trial is not an expressly guaranteed constitutional right in India but is implicit in the right to a fair trial which has been held to be part of the right of life and liberty guaranteed by Art. 21 of C the Constitution. While a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. The delay may be occasioned by the tactic or conduct of the accused himself. The delay may have caused no prejudice whatsoever to the accused. The question whether a conviction should be quashed on the ground of delayed D trial depends upon the facts and circumstances of the case. If the accused is found to have been prejudiced in the conduct of his defence and it would be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the E accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only."

The Court then examined the facts of the case before it in the light of the said principles and found that the accused himself was responsible for a fair F part of the delay and that he has also been unable to establish how he was prejudiced in the conduct of his defence on account of delay. Th court also took into consideration the nature of offence, namely an economic offence which jeopardises the economy of the country and held that it is not a case which calls for interference. Accordingly, it set aside the judgment of the High Court. In the course of his judgment, Chinnappa Reddy, J., noted that "delay is a known G defence tactic" and also that where the prosecution has a weak case, it may resort to same tactic with a view to keep the prosecution pending as long as possible. He observed :

"Denial of speedy trial may with or without proof of something more lead to an unavoidable inference of prejudice and denial of H justice. It is prejudice to a man to be detained without trial. It is prejudice to a man to be denied a fair trial."

This case is significant for the approach it adopts to the problem. According to this decision it is not possible to lay down any hard and fast rule in judging the complaint of denial of speedy trial and that all the circumstances of the case have to be taken into account before making a pronouncement. The important considerations to be kept in mind by the court are stated to be :

(1) Whether the accused is responsible for delay;

(2) Whether he is prejudiced by such delay in any manner, of course, in some case the delay may itself amount to prejudice;

(3) Nature of offence with which the accused is charged;

33. In *T.V. Vatheeswaran* v. *State of Tamil Nadu*, [1983] 2 S.C.R. 348, this court again reiterated the significance of the right to speedy trial and extended it even to post-conviction stage. It was held that undue delay in carrying out the death sentence entitles the accused to ask for lesser sentence of life imprisonment. This opinion is based upon the immense psycological, emotional and mental torture a man condemned to death suffers. Though this decision was over-ruled later by a Constitution Bench, it is relevant to the limited extent it re-affirms the right to speedy trial enunciated in *Hussain Ara Khatoon*.

34. In *S. Guin & Ors.* v. *Grindlays Bank Ltd.*, [1985] Suppl. 3 S.C.R. 818, the appellants were prosecuted under Section 341 of the I.P.C. read with Section 36AD of the Banking Regulation Act, 1949. The substance of the charge was that they had, without reasonable cause, obstructed the officers of the Bank from lawfully entering the premises of a branch of the bank and also obstructed the transaction of normal banking business. They were acquitted by the trial court whereupon the respondent/Bank filed an appeal before the High Court which allowed it after a period of six years and remanded the case for re-trial. The order of remand was questioned before this Court and was set aside. The following observations of E.S. Venkataramaiah, J. are relevant :

> "After going through the judgment of the Magistrate and of the High Court we feel that whatever might have been the error committed by the Magistrate, in the circumstances of the case, it was not just and proper for the High Court to have remanded the case for fresh trial, when the order of acquittal had been passed nearly six years before the judgment of High Court. The pendency of the Criminal Appeal for six years before the High Court itself a regrettable feature of this case. In addition to it, the order

directing re-trial has resulted in serious prejudice to the appellants. We are of the view that having regard to the nature of the acts alleged to have been committed by the appellants and other attendant circumstances, this was a case in which the High Court should have directed the dropping of the proceedings in exercise of its inherent powers under Section 482, Criminal Procedure Code even if for some reason it came to the conclusion that the acquittal was wrong. A fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process."

It is significant to notice that the nature of the offence appears to have mainly weighed with the Court in directing that the proceedings ought not to be continued any further.

35. In *Sheela Barse & Ors.* v. *Union of India & Ors.*, [1986] 3 S.C.R. 562, a Division Bench comprising Bhagwati and R.N. Misra, JJ. re-affirmed that the "right to speedy trial is a fundamental right implicit in Article 21 of the Constitution" and observed "the consequence of violation of fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right." Thus, the court answered the question which Bhagwati, J. had posed in the first *Hussain Ara* case. Accordingly, they directed that so far as a child accused of an offence punishable with imprisonment of not more than 7 years is concerned, a period of three months from the date of filing of complaint or lodging of the F.I.R. shall be deemed to be the maximum time permissible for investigation and a period of six months from the filing of the charge-sheet as the reasonable period within which the trial should be completed. It was specifically directed that if these time limits are not obeyed, the prosecution against the child should be quashed.

36. We may now notice the decision of this court in *Raghubir Singh and Ors.* v. *State of Bihar*, [1986] 3 S.C.R. 802. In this case, Simranjit Singh Mann and few others applied to this Court for bail and also for quashing the proceedings pending against them before the Special Judge on the ground of violation of right to speedy trial. It was urged that the said right of the petitioners was being frustrated by the tactics adopted by prosecution whose only object was to somehow keep the petitioners in prison. It was also argued that there was no material whatsoever to frame charges under Section 121-A and 124-A. Chinnappa Reddy, J. affirmed that right to speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21 of the Constitution. After examining the decisions of the United State

Supreme Court in *Strunk* v. *United States*, (37 Lawyers Edn. 2nd 56) and *Willie Mae Barker* v. *John Wingo*, (33 lawyers Edn. 2nd 101 and also of the *Privy Council in Bell* v. *Director of Public Prosecutor Jamaica*, [1985] 2 A.E.R. 585, the learned Judge posed the following relevant questions :

> "Several question arise for consideration. Was there delay? How long was the delay? Was the delay inevitable having regard to the nature of the case, the sparse availability of legal services and other relevant circumstances? Was the delay unreasonable? Was any part of the delay caused by the willfulness or the negligence of the prosecuting agency? Was any part of the delay caused by the tactics of the defence? Was the delay due to cause beyond the control of the prosecuting and defending agencies? Did the accused have the ability and the opportunity to assert his right to a speedy trial? Was there a likelihood of the accused being prejudiced in his defence? Irrespective of any likelihood of prejudice in the conduct of his defence, was the very length of the delay sufficiently prejudicial to the accused? Some of these factors have been identified in *Barker* v. *Wingo* (supra). A host of other questions may arise which we may not be able to readily visualise just now. The question whether the right to a speedy trial which forms part of the fundamental right to life and liberty guaranteed by Art. 21 has been infringed is ultimately a question of fairness in the administration of criminal justice even as 'acting fairly' is of the essence of the principles of natural justice (In re. H.K. 1967 (1) All ER 226) and a 'fair and reasonable procedure' is what is contemplated by the expression 'procedure established by law' in Art. 21 (Maneka Gandhi)."

The approach adopted by the learned Judge in this case is practically the same as was adopted by him in *Champalal Punjaji Shah* (supra) to wit, right the speedy trial "is ultimately a question of fairness in the administration of criminal justice."

37. In *Rakesh Saxena* v. *State through C.B.I.*, [1987] 1 S.C.R. 173, this court quashed the proceedings on the ground that any further continuance of the prosecution after lapse of more than six years in the case of the appellant who was merely a trader at the lowest rung of the hierarchy in the Foreign Exchange Division of the Bank is uncalled for, particularly in view of the complicated nature of the offence charged.

Similarly, in *Srinivas Gopal* v. *Union Territory of Arunachal Pradesh*,

A (Now State) [1988] suppl. 1 S.C.R. 477, the court quashed the proceedings against the appellant on the ground of delay in investigation and commencement of trial. In this case, investigation commenced in November, 1976 and the case was registered on completion of the investigation in September, 1977. Cognizance was taken by the court in March, 1986. These facts were held sufficient to quash the proceedings particularly when the offence charged was B a minor one namely, Section 304A read with 338 of the Indian Penal Code.

38. Again in *T.J. Stephen & Ors* v. *Parle Bottling Co. (P) Ltd. & Ors.*, [1988] 3 S.C.R. 296 it was held that though the order of the High Court quashing charges against the accused (Under Section 5 of the Imports and Exports (Control) Act, 1947) was unsustainable in law it would not be in the C interest of justice to allow prosecution to start and trial to be proceeded with after a lapse of twenty years even though one of the accused was himself responsible for most of the delay caused by his *mala fide* tactics. In this decision, there is no reference either to Article 21 or to the right to speedy trial. The order is merely based on the fact that it would not be in the interest of justice to allow a prosecution and trial to recommence after a lapse of 20 years. D

In *Diwan Naubat Rai & Ors.* v. *State through Delhi Administration and Anr.*, [1989] 1 S.C.C. 297, the court refused to quash the proceedings inasmuch as it was found that the accused himself was mainly responsible for the delay of which he was complaining.

E 39. In *State of Andhra Pradesh* v. *P.V. Pavithran*, [1990] 2 S.C.C. 340, this court upheld the decision of the High Court quashing the F.I.R. on the ground of inordinate delay in completing the investigation. The respondent was an I.P.S. Officer against whom an offence under Section 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act was registered in March, 1984. He F was placed under suspension but then it was revoked in September, 1984 and he was reinstated in service. In July, 1985, the government cancelled its earlier order and called upon the respondent to show cause why he should not be retired from service. The respondent challenged the said notice before the Central Administrative Tribunal which was upheld. The Special Leave Petition presented to this court was dismissed in view of the fact that respondent had G already retired from service on attaining the age of superannuation. After all this, the Anti-corruption Bureau re-started the criminal proceedings in 1987-88 whereupon the respondent approached the High Court for quashing the said proceedings on the ground of delay. The High Court quashed the same accepting the ground urged. This court affirmed. Of course, while doing so, it took care to observe that while examining the plea of delay in completing the H investigation, the court should have regard to all the relevant circumstances and

that it is not possible to formulate any inflexible guidelines or rigid principles of uniform application for speedy investigation nor is it possible to stipulate any arbitrary period of limitation for completing the investigation. In short, the principle of *Raghubir Singh* was reiterated.

40. As a matter of fact, right to speedy trial is embedded in the statutory law of this country. Sub-sections 1 and 2 of Section 309 Cr. P.C. (corresponding to Sub-sections 1 and 1A of Section 344 of Code of Criminal Procedure, 1898) exemplify this rule. They say :

> "309. Power to postpone or adjourn proceedings.--(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reason to be recorded.
>
> (2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement or, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.
>
> Provided that no magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.
>
> Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reason to be recorded in writing.
>
> Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him."

The provisions must be read with Section 482 of the Code which saves the inherent powers of the High Court. The latter provision recognizes the power of the High Court to pass appropriate orders "to prevent abuse of process of any court or otherwise to secure the ends of justice". In several cases, the High Courts and this court have directed dropping or discontinuance of

A proceedings where such proceedings constituted an abuse of process of court or where the ends of justice demanded such a course of action. We may refer to some of these cases now.

41. In *Machander* v. *State of Hyderabad*, [1955] 2 S.C.R. 524, this court observed that while it is incumbent on the court to see that no guilty person B escapes, it is still more its duty to see that justice is not delayed and accused persons are not indefinitely harassed. The scales, the court observed, must be held even between the prosecution and the accused. In the facts of that case, the court refused to order trial on account of the time already spent and other relevant circumstances of that case.

C In *Veerbhadra* v. *Ramaswamy Naickar*, [1959] S.C.R. 1211, this court refused to send back proceedings on the ground that already a period of five years has elapsed and it would not be just and proper in the circumstances of the case to continue the proceedings after such a lapse of time. Similarly, in *Chajju Ram* v. *Radhey Sham*, [1971] (suppl.) S.C.R. 172, the court refused to direct a re-trial after a period of 10 years having regard to the facts and D circumstances of the case. In *State of U.P.* v. *Kapil Deo Shukla*, [1972] 3 S.C.C. 504, though the court found the acquittal of the accused unsustainable, it refused to order a remand or direct a trial after a lapse of 20 years.

It is, thus, clear that even apart from Art. 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was E inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders.

42. We shall now consider certain American cases upon which both sides F placed strong reliance.

The first case relied upon is *Barker* v. *Wingo*, 33 Lawyers Edn. 101 decided in the year 1972. The petitioner, Barker and another person Silas Manning were arrested in connection with a murder which took place in July, 1958. They were indicated in September and the trial was set for October 21, G 1958. The State had a stronger case against the other accused Manning and it believed that Barker cannot be convicted unless Manning testified against him. But this was possible only if Manning was convicted first; then alone he could be examined as a witness. Therefore, the State delayed the petitioner's trial and proceeded against Manning. Ultimately, Manning was convicted in December, 1962 after as many as six trials. Pending the proceedings against Manning, H prosecution was obtaining adjournments of the trial against the petitioner

(*Barker)* from time to time. After 10 months, the court released him on executing a bond, since the prosecution continued to obtain adjournments. In March, 1963 i.e., after obtaining the conviction of Manning, the case against Barker was sought to be proceeded against. The trial was held in October, 1963 and Barker was convicted over-ruling his plea for dismissal of indictment on the ground of violation of his right to speedy trial. The Appellate Court affirmed. The matter was, then, brought to Supreme Court on certiorari. The main contention of the accused was that the delay of five years in holding the trial was unduly long and that it violated his right to speedy trial. The court rejected this plea. It recognised that more than four years period taken by prosecution for trying the petitioner-accused was too long a period but, they held, this factor must be weighed against certain counter-balancing factors namely : (1) prejudice to the petitioner was minimal; (2) he was in jail only for a period of 10 months and was free thereafter; and (3) the petitioner himself did not rally want a speedy trial. He too was gambling on acquittal of Manning, in which case, the prosecution may not have prosecuted him at all.

43. It would be appropriate to notice certain observations of the court with respect to the right to speedy trial. We are referring to this case in some detail for the reason that this decision has not only been followed in subsequent decisions of the United States Supreme Court but has also been approved by the Privy Council, as we shall presently point out. The relevant observations of the court may be set out in their own words :

> "The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition too, the interests of the accused. ..... A second difference between the right to speedy trial and the accussed's other constitutional rights is that deprivation of the right may work to the accussed's advantage. Delay is not an uncommon defense tactic. As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade ...
>
> Deprivation of the right to speedy trial does not *per se* prejudice the accussed's ability to defend himself..... right to speedy trial is more vague concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system

A where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to speedy trial .....

The amorphous quality of the right also leads to the unsatisfactorB ily severe remedy of dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried. Such a remedy is more serious than an exclusionary rule or a reversal for a new trial, but it is the only possible remedy .....

C

We reject, therefore, the rule that a defendant who fails to demand a speedy trial forever waives his right. This does not ..... mean, however, that the defendant has no responsibility to assert his right. We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors D to be considered in an inquiry into the deprivation of the right .....

The approach we accept is a balancing test, in which the conduct of both the prosecution and the defendant are weighed.

E

A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can to little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify F four such factors : length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant .....

The length of the delay is to some extent a trigerring mechanism. Until there is some delay which is presumptively prejudicial, there G is no necessity for inquiry into the other factors that go into the balance .....

The four factors identified above ..... are related factors and must be considered together with such other circumstances as may be relevant ..... Courts must still engage in a difficult and H sensitive balancing process. But, because we are dealing with a

fundamental right of the accused, this process must be carried out with full recognition that the accussed's interest in a speedy trial is specifically affirmed in the Constitution."

44. In *Strunk* v. *United States*, 37 Lawyers Edn. 2nd 56 it was held that an accussed's right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial. It was observed that the desires or convenience of the accused or other individuals are of little relevance and make no difference to the prosecutor's obligation to ensure a prompt trial. The main question considered in this case was whether the violation of the said guarantee entails dismissal of the charges. It was held that dismissal of charges is the only possible remedy where a speedy trial has been denied. Indeed, in this case, the court of appeals was also of opinion that the accused's right to speedy trial was denied but it did not quash the charges but directed merely that the sentence awarded to the accused should be reduced by the period of unconstitutional delay. (The matter was taken to appellate court after the district court had convicted and sentenced the accused).

45. In *Bell* v. *Director of Prosecution, Jamaica*, [1985] 2 A.E.R. 585; the Privy Council expressely affirmed the principles enunciated in Barker in the following words :

"Their Lordships acknowledge the relevance and importance of the four factors lucidly expanded and comprehensively discussed in *Barker* v. *Wingo*. Their Lordships also acknowledge the desirability of applying the same or similar criteria to any constitution, written or unwritten, which protects an accused from oppression by delay in criminal proceedings. Th weight to be attached to each factor must however vary from jurisdiction to jurisdiction and from case to case."

In this case, the Privy Council emphasised the necessity of taking notice of the delays inherent in a particular system. The Privy Council was dealing with a case from Jamaica. The Court of Appeals of Jamaica held that having regard to the circumstances obtaining in that country, a delay of 32 months cannot be said to infringe the constitutional right of an accused to speedy trial. The Privy Council observed that this opinion of the Jamaican court, which must be deemed to be acquainted with the conditions in that country, must be accepted. But, inasmuch as, it was a case of re-trial, the Privy Council held that the said delay must be held to have infringed the said right. The Board emphasised that a re-trial must be held with greater speed and that the delay which may be ignored in the case trial may not be ignored in the case of re-trial.

A 46. In *United States* v. *Hawk* 88 Lawyers End. 2nd 640, the accused were indicated in November, 1975 for illegal possession of fire-arms and explosives. The accused moved for suppression of all evidence as to their alleged possession of dynamite on the ground that the dynamite had been destroyed by the State Law Enforcement Officers. When the case was called for trial in May, the prosecution reported not ready. The district court dismissed the indictment B with prejudice. During the next seven years, there were numerous proceedings in the Court of Appeals as well as in the District court following orders of remand. During a 46 month period i.e., from the date of dismissal of the indictment, until the re-instatement of indictment following the Appeal Court order, the defendants were unconditionally released. After remand from the Appeal Court, the District Court dismissed the indictment in May, 1983 on the C ground of violation of the accussd's right to speedy trial. The matter was, ultimately, brought to the Supreme Court where a majority of Judges (5 : 4) held that the time during which the defendants were neither under indictment nor subject to any official restraint and where the delays were caused on account of interlocutory appeals, cannot be counted towards delay and do not entitle the accused to any relief on that basis. The minority, however, held that D though the indictment against the defendant was dismissed and they were unconditionally released, their case remained on the trial court's docket and that the time taken for appeals in their case was patently unreasonable. For the said delay, the prosecution ought to suffer and not the accused. We do not think it necessary to refer to the reasoning of this case in any detail since it, besides affirming the Barker principles in all respects; mainly deals with the question E whether the time taken in prosecuting interlocutory appeals should or should not count towards delay, particularly where the accused are released unconditionally during that period.

Besides the above, certain other American cases and articles by several F Professors of Law in America have been brought to our notice but we do not wish to burden this judgment with all those opinions since most of them either affirm or criticize the principles enunciated in *Barker, Hawk* and other cases.

47. At this stage, we think it appropriate to deal with the facts of and the principles enunciated in *Madheswardhari Singh* v. *State of Bihar*, (A.I.R. 1986 G Patna 324) (Full Bench) which decision is the subject matter of criminal appeal No. 126 of 1987 preferred by the State of Bihar. In fact, the learned counsel for the petitioners-accused strongly relied upon it. Five questions were referred to the Full Bench, namely :

> "1. Whether the fundamental right to a speedy trial enshrined in H Article 21 of the Constitution by precedential mandate is confined to only capital offences or is attracted to all offences generically?

2. Whether the aforesaid right to a speedy trial is applicable only to the proceedings in Court *stricto senso* or includes within its sweep the preceding Police investigation as well?

3. Is a speedy trial equally mandated by both the letter and spirit of the Code of Criminal Procedure, 1973?

4. Whether the ratio in *Ramdaras Ahir's* case (1985 Cri LJ 584) *(Pat)* (supra) and in *Maksudan Singh's* case (A.I.R. 1986 Pat. 38 (FB) (supra) are applicable equally to all offences and irrespective of the fact whether the proceedings are a trial or an appeal against acquittal?

5. Whether an outer limit to concretise the right to a speedy public trial is envisioned by principle of precedent?

The facts of the case are rather unusual—may be not so unusual in the State of Bihar. The petitioner in the said writ petition, Madheshwardhari Singh was a Class I Government Officer. During the year 1964-65, he was posted as the Assistance Director, Central Poultry Farm, Patna. On Satyanarayana Sharma, Store Keeper was his subordinate on the said farm. On the basis of a written complaint made by his successor, a first information report was registered against Satyanarayana Sharma under Sections 467, 409 and 120B I.P.C. on 20th November, 1956. The petitioner was not named as an accused in that report. The allegations made therein, however, raised a cloud of suspicion against the petitioner as well. The investigation by police went on and ultimately on 29th September, 1975 the petitioner was also made an accused in the said case. According to the petitioner, this was done *mala fide* and with a view to jeopardise his career and prospects of promotion. Be that as it may, he was arrested and produced before the Magistrate who granted him provisional bail on 20th April, 1975 which was confirmed later on. On 30th January, 1976, a charge-sheet was filed against the petitioner. Proceedings thereafter went on at a very leisurely pace. Charges were framed in July, 1977. Inspite of directions of the court, prosecution did not examine the witnesses in quick succession but in driblets. Finding that the prosecution was not heeding its orders nor was adducing evidence, the learned Magistrate closed the prosecution case in April, 1984. It is necessary to point out that between July, 1977 (when the charges were framed against him) and April, 1984 (when the learned Magistrate closed the prosecution case) only about 9 out of the 40 witnesses cited were examined. Aggrieved by the trial court's order closing its case, the prosecution preferred a revision which was allowed directing the Magistrate to give an opportunity to the prosecution. Even so, the prosecution did not avail

A of the opportunity. The learned Magistrate closed the prosecution case once again in September, 1984. The State went up in revision to the learned Sessions Judge against this order and yet again the learned Sessions Judge directed the Magistrate to give an opportunity to the prosecutor to examine witnesses. In January 1985, only one witness was examined and none thereafter, with the result that the prosecution case was again closed on May 1, 1985. At this stage, B the accused-petitioner raised an objection that there was no valid sanction for prosecuting him. For producing a copy of the order of sanction, prosecution obtained several adjournments but did not produce it. Ultimately, on October 1, 1985, petitioner filed an application before the learned Magistrate claiming that his fundamental right to speedy trial has been violated by the passage of nearly 20 years in investigation and trial and asking for quashing of the C proceedings on that ground. The learned Magistrate rejected the said application whereupon he approached the High Court.

48. Sandhawalia, CJ., speaking for the Full Bench, held, on a review of several decisions of this court and of the United States of America, that right to speedy trial is inherent in and flows from Art. 21. The learned Chief Justice D stated the following four principles as flowing from Article 21, viz.,

> "1. That, now by precedential mandate the basic human right to a speedy public trial in all criminal prosecutions has been expressly written as if with pen and ink in the constitutional right relating to life and liberty guaranteed under Article 21 of our Constitution. E Further, that this right is identical in content with the express constitutional guarantee inserted by the Sixth Amendment in the American Constitution.
>
> 2. That the American precedents on the Sixth Amendment of that Constitution would be equally attracted and applicable as persua- F sive on this facet of Article 21 of our Constitution as well.
>
> 3. That once the constitutional guarantee on a speedy trial and the right to a fair, just and reasonable procedure under Article 21 has been violated, then the accused is entitled to an unconditional G release and the charges levelled against him would fall to the ground.
>
> 4. That a callous and inordinate prolonged delay of ten years or more, which, in no way arises from the accussed's default (or is otherwise not occasioned due to any extraordinary and exceptional H reasons), in the context of reversal of a clean acquittal on a capital

charge, would be *per se* prejudicial to the accused and would plainly violate the constitutional guarantee of a speedy trial under Article 21." A

The other findings of the Full Bench are to the following effect :

"1. the right to speedy trial applies not only to major crimes but to minor offences as well; B

2. it takes in its fold not only the proceedings in court but also the preceding police investigation;

3. the provisions of the Code of Criminal Procedure and the Bihar Police Manual not only embody the spirit of a speedy public trial but, in fact, epitomise it by express provisions mandating speedy and expeditious disposal within specified time limits. There is no conflict between Article 21 and the provisions of the Code." C

The more important principle enunciated in this decision relates to the question whether a time-limit should be prescribed to effectuate the said right. After an elaborate examination of several decisions of this court including *Sheela Barse*, and of the American Supreme Court, the learned Judge came to the following conclusion : D

"..... an outer limit to concretise the right to speedy public trial is envisioned both by principle and precedent. It is further held that a callous and inordinately prolonged delay of seven years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reason) in investigation and original trial for offences other than capital ones plainly violate the constitutional guarantee of a speedy public trial under Article 21." E F

He added further :

"A sharp note of caution must be sounded. The aforesaid finding must not be misunderstood or misconstrued to mean that a delay of less than seven years would not in any case amount to prejudice. Indeed, what is sought to be laid down is the extreme outer limit where after grave prejudice to the accused must be presumed and the infraction of the constitutional right would be plainly established. Really, I am somewhat hesitant in spelling out even the G H

aforesaid outer time limit which, perhaps, errs on the side of strictitude. But since we are following binding precedent, the same has to be unreservedly accepted. Nor is it sought to be laid down that in a lesser period than seven years an accused person would not be able to establish circumstances pointing to the patent prejudice which may entitle him to invoke the guarantee of speedy public trial under Article 21."

The learned Chief Justice then examined the facts of the case before him in the light of the principles evolved and held that it is a clear case where the petitioner's right to speedy trial has been violated. He found that the petitioner was not guilty of obstructive tactics and that the delay was entirely of the prosecution's doing. Accordingly, the investigation and the trial against the petitioner was quashed. Another Full Bench presided over by the same learned Chief Justice held in *State* v. *Maksudan Singh*, A.I.R. 1986 Patna 38 that in case of serious offences like murder, delay of 10 years or more occasioned entirely by the default of prosecution must be deemed to be *per se* prejudicial to the accused.

49. Article 21 declares that no person shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure, 1973. Several other enactments too contain many a procedural provision. After *Maneka Gandhi*, it can hardly be disputed that the 'law' (which has to be understood in the sense the expression has been defined in clause (3) (a) of Article 13 of the constitution) in Article 21 has to answer the test of reasonableness and fairness inherent in Articles 19 and 14. In other words, such law should provide a procedure which is fair, reasonable and just. Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declare so. Societal interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch—reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause

for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes.

50. The provisions of the Code of Criminal Procedure are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains—unpleasant as it is—that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the Constitutional guarantee of speedy trial emnating from Article 21 is properly reflected in the provisions of the Code.

51. But then speedy trial or other expressions conveying the said concept are necessarily relative in nature. One may ask-speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the work-load in the particular court, means of communication and several other circumstances have to be kept in mind. For example, take the very case in which Ranjan Dwivedi (petitioner in writ petition No. 268 of 1987) is the accused. 151 witnesses have been examined by the prosecution over a period of five years. Examination of some of the witnesses runs into more than 100 typed pages each. The oral evidence adduced by the prosecution so far runs into, we are told, 4000 pages. Even though, it was proposed to go on with the case five days of a week and week after week, it was not possible for various reasons viz., non-availability of the counsel, non-availability of accused, interlocutory proceedings and other systemic delays. A murder case may be a simple one involving say a dozen witnesses which can be concluded in a week while another case may involve a large number of witnesses, and may take several weeks. Some offences by their very nature e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public servants and high public officials take longer time for investigation and trial. Then again, the work-load in each court, district, region and State varies. This fact is too well-known to merit illustration at our hands. In many places, requisite number of courts are not available. In some places, frequent strikes by members of the Bar interferes with the work-schedules. In short, it is not possible in the very nature of things and present day circumstances to draw a time limit beyond which a criminal proceeding will not be allowed to go. Even in the U.S.A., the Supreme Court has refused to draw such a line. Except for the Patna F.B. decision under appeal, no other decision of any High Court in

A this country taking such a view has been brought to our notice. Nor, to our knowledge, in United Kingdom. Wherever a complaint of infringement of right to speedy trial is made the court has to consider all the circumstances of the case including those mentioned above and arrive at a decision whether in fact the proceedings have been pending for an unjustifiably long period. In many cases, the accused may himself have been responsible for the delay. In such cases, he B cannot be allowed to take advantage of his own wrong. In some cases, delays may occur for which neither the prosecution nor the accused can be blamed but the system itself. Such days too cannot be treated as unjustifiable-broadly speaking. Of course, if it is a minor offence-not being an economic offence-and the delay is too long, not caused by the accused, different considerations may arise. Each case must be left to be decided on its own facts having regard to the C principles enunciated hereinafter. For all the above reasons, we are of the opinion that it is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory.

D 52. We may next deal with, what is called the 'demand' rule. The contention is that an accused who does not demand a speedy trial, who stands by and acquiesces in the delays cannot suddenly turn round after a lapse of period and complain of infringeme ' of his right to speedy trial. It is not possible to accede to this contention either. An accused does not prosecute himself. The State or complainant prosecutes him. It is, thus, the obligation of E the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from and poorer weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if an accused demands speedy trial and yet he is not given one, may be a F relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.

53. Another question seriously canvassed before us related to the conse- G quence flowing from an infringement of right to speedy trial. Counsel for accused argued on the basis of the observations in *Sheela Barse* and *Strunk* that the only consequence is quashing of charges and/or conviction, as the case may be. Normally, it may be so. But we do not think that that is the only order open to court. In a given case, the facts—including the nature of offence—may be such that quashing of charges may not be in the interest of justice. After all, H every offence—more so economic offences, those relating to public officials

and food adulteration—is an offence against society. It is really the society—the state—that prosecutes the offender. We may in this connection recall the observations of this court in *Champalal Punjaji Shah.* In cases, where quashing of charges/convictions may not be in the interest of justice, it shall be open to the court to pass such appropriate orders as may be deemed just in the circumstances of the case. Such orders may, for example, take the shape of order for expedition of trial and its conclusion within a particular prescribed period, reduction of sentence where the matter comes up after conclusion of trial and conviction, and so on.

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

1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this court has understood this right and there is no reason to take a restricted view.

3. The concerns underlying the Right to speedy trial from the point of view of the accused are :

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

A 4. At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be B cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the Right to speedy trial is alleged to have been infringed, the first question to be put and answered is-who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. C It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex-parte representation.

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

6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same ideal has been F stated by White, J. in *U.S.* v. *Ewell*, 15 Lawyers Edn. 2nd 627, in the following words :

> "the sixth amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than G more speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an un-constitutional deprivation of rights depends upon all the circumstances."

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a H relevant fact. The prosecution should not be allowed to become a persecution.

But when does the prosecution become prosecution, again depends upon the facts of a given case. A

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

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

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

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

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

55. Now let us examine the facts in writ petition No. 833 of 1990 in the light of the above principles. It is true that Special Case No. 24 of 1982 instituted in 1982 is still pending in the year 1991 but then the question arises who is responsible for the delay? As soon as process was issued by the Special Judge (Sri P.S. Bhutta), the accused appeared and raised two objections viz. :

(i) that the Special Judge has no jurisdiction to take cognizance of the case on the basis of a private complaint and that an investigation by a Police Officer is the condition-precedent to taking cognizance; and

(ii) that unless the State Government issues a notification under Section 7(2) of 1952 Act, neither Special Judge has the jurisdiction to take cognizance of the case.

These objections were over-ruled by the Special Judge. The matter was then carried by him to High Court. High Court too over-ruled his first objection. So far as the second objection is concerned, it was not necessary for the High Court to go into it inasmuch as pending the proceedings in High Court, the Government of Maharashtra had issued a notification under Section 7(2) of 1952 Act, designating Sri Sule to try the said case. He then carried the matter to this court which too was dismissed in February, 1984. Meanwhile, he had raised another objection before Sri Sule to the effect that without the sanction of the Governor, he can't be proceeded against for the offences in question, since he was a member of the Maharashtra Legislative Assembly. Sri Sule agreed with him but this court did not and directed that the trial should go on a day-to-day basis. With a view to expedite the trial, the case was transferred to High Court. Before Khatri, J., the accused raised an objection that he is not competent to try the case. The objection was over-ruled. He came to this court but it was of no avail. At that stage, Mehta, J. framed some charges but refused to frame charges with respect to some other allegations. The complainant came to this court and was successful. The matter was then taken up by Shah, J., who framed 79 charges and commenced the trial. Several witnesses were examined and voluminous evidence adduced by 1986, when the accused approached this court again under Art. 21 and by way of two S.L.Ps. and got the proceedings stayed in 1986.

In April 1988, a seven-Judge Bench, by a majority of 5 : 2 agreed with him that the direction made by the Constitution Bench on 16.2.1984 was without jurisdiction and that the High Court could not have been empowered to try the said case. The result was that the case had now to be tried by the Special Judge. But which Special Judge? asks the counsel for the complainant.

Sri Sule, who was previously designated under a notification issued under Section 7(2) of 1952 Act ceased to be a Judge. There was no other notification designating any other Judge to try this case. Without a notification under Section 7(2), may be neither of the two Special Judges at Bombay was competent to take up the matter. In fact, that was the petitioner's objection taken in 1982, upon which there was no pronouncement either by the High Court or this court in view of the notification issued by the Government of Maharashtra pending the proceedings before High Court. The Bombay High Court too did not send the file to either of the Special Judges. That such a notification was necessary, was also the view of the Government of Maharashtra, as would be evident from the statement of the learned Advocate-General (made on instructions) before the High Court in writ petition (crl.) No. 281 of 1990 disposed of on 23.4.1990. The Government of Maharashtra actually issued the notification on 19.6.1990 designating a Special Judge as the Judge competent to try this case.

At this stage, we must refer to a controversy with respect to the meaning and effect of the court's judgment in 1984 (2) S.C.R. 914. Sri P.P.Rao says that this decision, though not in express words, does lay down by necessary implication that taking cognizance of the case by Sri Bhutta, Special Judge was valid and competent. He lays particular stress on the last para of the judgment which reads :

> "..... Having examined the matter from all the different angles, we are satisfied that the conclusion reached both by the learned Special Judge and Division Bench of the Bombay High Court that a private complaint filed by the complainant was clearly maintainable and that the cognizance was properly taken is correct. Accordingly, this appeal fails and dismissed."

Mr. Rao further contended that even if no notification was issued under the 1952 Act, yet the principal Special Judge did have the jurisdiction to entertain and go on with the said case. He could have tried it himself or made over to the Additional Special Judge. This position follows from the decision of this court that court of Special Judge is also a court of original criminal jurisdiction, he argues.

On the other hand, the contention of Sri Ghatate is that there is absolutely no discussion on this point in the whole of the judgment and that the last para must be understood in the light of the discussion in the judgment and not in isolation. We need not pronounce upon this controversy. What is relevant in this context is not-what was the true legal position. It is whether there was room

for genuine doubt and whether the legal position was not ambiguous? From this stand point, it is sufficient to notice that the matter admitted of two opinions and that the issue was not free from ambiguity. The very fact that the Advocate-General of Maharashtra, the Government of Maharashtra and two learned Judges of the Bombay High Court thought that a notification under the 1952 Act was 'necessary' for proceeding with the case also goes to show that the said view was not without any force. Even if there were only one Special Judge for Bombay, there would still have been room for doubt in view of the earlier notification specifying Sri Sule as the Judge competent to try this case. The argument of Sri Ghatate on this score cannot, therefore, be characterised as unfounded. In the circumstances the period between April, 1988 and June, 1990 cannot be treated as delay caused by the complainant.

It is true that after the judgment of Seven-Judge Bench of this court in April, 1988, the complainant did not himself move the Government of Maharashta to designate a Special Judge for the case but waited till another person, an advocate, did so. (Of course, when asked by the High Court, he expressed his readiness to go on with the prosecution). It is also true that even after the Government issued the notification dated 19.6.90, he does not appear to have moved in the matter till about September, 1991, but this conduct of his must be weighed against the following circumstances :

"(a). the nature of the offences, with which the accused-petitioner is charged are quite serious. 79 charges were framed by the Bombay High Court earlier including those under the Prevention of Corruption Act and abuse of power on the basis of the material produced by the complainant. It is true that all that has come to nought with the holding that the very transfer of the case to High Court was incompetent. But the above fact is relevant for the limited purpose of showing the nature of the offences with which the petitioner is charged and that they cannot be said to be groundless-*prima facie* speaking. There is the judgment of Bombay High Court (in W.P. No. 1165/81, allowed on 12.1.1982), which castigated the petitioner for the said activity, leading to his resignation from the office of Chief Minister. It must be remembered that several of the allegations in that writ petition and this criminal case are common-a fact taken notice of in the earlier judgments of this court. Public interest lies in knowing the truth.

(b) A large volume of evidence was led by him (R.S. Nayak) in Bombay High Court during the years 1984-86. As many as 57 witnesses were examined and 963 documents exhibited. The

Bombay High Court spent almost an year in recording the evidence on behalf of the complainant, running into more than 1200 pages. He had practically closed his side. It must have necessarily cost him great effort apart from expense. All this came to nought with the judgment of this court rendered in April, 1988. Adducing that evidence over again is not an easy task. Therefore, on 31.5.1989 he made an application in this court (C.M.P. No. 1946/90) to treat that evidence as evidence before the Special Judge. It is true that we are dismissing that application now but it cannot be said that that application was made by him otherwise than in good faith nor can it be termed as a delaying tactic. That application remained pending. The complainant is an individual. May be, he is member of a political party. But that is of little consequence.

c) Until 1988, it was the accused who was raising several objections from time to time and getting the trial stayed. In most of them he failed. In one he succeeded. We have already detailed them above and need not repeat. May be the very system was partly responsible for the somewhat unusual course of events. The complainant was certainly not to blame. The inaction of the complainant, referred to above, is only after the decision of Seven-Judge Bench and not earlier thereto. As a matter of fact, writ petition (crl.) 542/86 and S.L.P.(crl.)2518/86 filed by the petitioner are still pending in this court, wherein he is questioning the constitutionality of Section 197 Cr.P.C. and also contending that the charges against him require the sanction under that very section.

d) The ambiguity prevailing as to the particular Special Judge competent to try this case after April, 1988, and the issuance of notification under Section 7(2) of Criminal Law Amendment act only in June, 1990. (The present writ petition was filed in the same month).

e) The petitioner has never been incarcerated-not even for a day. It is also not clearly established how this delay has prejudiced his case. In ground No. 10 of his writ petition, he merely stated that six persons whom he wanted to examine at the trial have expired. He has named six persons including Mrs. Indira Gandhi, Naval Tata, Pesi Tata and Vasantdada Patil. He has, however, not elaborated which of them was proposed to be examined on what aspect? Mrs. Indira Gandhi and Pesi Tata died even before April, 1988. The other four have no doubt died after April, 1988, but it is not clearly

A shown how the same has caused him prejudice. As a matter of fact, both Mrs. Indira Gandhi and Sri Vasantdada Patil were cited as complainant's witnesses (Sl. Nos. 106 and 114 respectively in the list of witnesses appended to complaint).

On a consideration of all the facts and circumstances of the case-
B balancing process-we are of the opinion that this is not a fit case for quashing the criminal proceedings. The proper direction to make is to direct the expeditious trial on a day-to-day basis. Accordingly, we dismiss petition No. 833 of 1990 and direct the Special Judge designated for this case to take up this case on a priority basis and proceed with it day-to-day until it is concluded.

C 56. Now coming to writ petition No. 268 of 1987 (Ranjan Dwivedi) the position is this :

It is clear from the material placed before us that the prosecution cannot be held guilty of any delaying tactics or for that matter, for causing any delay in the conduct of trial from the date the criminal proceedings were transferred
D to Delhi. The proceedings of the court for this period placed before us by the respondents do clearly establish that during this period the prosecution has always been anxious to go on with the trial. That the trial could not be concluded so far is for reasons for which prosecution cannot be held responsible. Mr. Jethmalani submits that the accused was obliged to file the revision
E (Cr. Revision No. 191/86) in Delhi High Court, in the year 1986, and obtain stay of proceedings on account of the unreasonable and unfair attitude adopted by the prosecution and that, therefore, the delay of five years (1986 to 1991) should be laid at the door of the prosecution. We are afraid, we cannot do so. It is one thing to say that the accused had filed the said criminal revision to protect and vindicate his rights in good faith and, therefore, he cannot be
F accused of delaying tactics. But it is another thing to say that since the prosecution had opposed his request to examine 13 witnesses (given up by prosecution) as court witnesses, it should be held responsible for all this delay. It must be remembered that the prosecution's stand was upheld by the learned trial Judge. Thus, it is clear that from 1979 onwards (when the proceedings were transferred to Delhi court) the prosecution cannot be said to be guilty of
G any delay. This much is practically beyond dispute.

Mr. Jethmalani, however, raised certain other contentions on the basis of which, he said, the proceedings against the petitioner ought to be quashed. According to him, the prosecution is guilty of several illegalities and irregularities in this matter during the period 1975 to 1979 which establish its malovo-
H lence. We have set-out the said contentions in para 23 (supra). In particular, he

stressed the fact that though the petitioner was arrested in July, 1975 for two offences (the case of attempt to murder Chief Justice Ray and L.N. Misra murder case) the accused was never informed that he was implicated in the latter offence. He was never produced in Patna court till December, 1976 and extension of remand was obtained from time to time without producing him before the Patna court and without even informing him. He pointed out that on the expiry of 90 days from the date of his arrest the petitioner had earned a right to be released under section 167 Cr.P.C. inasmuch as the charge-sheet was not filed within that period. Even after the accused-petitioner obtained bail from Delhi High Court in the criminal appeal, he could not be enlarged on bail because of his implication in L.N. Misra murder case. The learned counsel says that the period of incarceration subsequent to grant of bail by Delhi High Court was illegal. Certain other alleged illegalities are also pointed out. We do not, however, think it proper to pronounce upon the correctness or otherwise of the said aspect in this writ petition. If indeed, any such illegalities have been committed, we are sure that they will be taken into consideration by the court as and when the case comes up for final disposal. In this context, it is relevant to notice that the petitioner did not ask for quashing of the charges on account of said illegalities at the proper time. We cannot quash the proceedings at this stage, on the said grounds—assuming that the said grounds are valid and acceptable—particularly when the prosecution has completed its case after examining as many as 151 witnesses spread over a period of five years.

Learned counsel, Sri Jethmalani also laid great stress on the fact that C.B.I. was under an obligation to place before the court the evidence against two Arun Kumars, against whom they had been proceedings for about six months and whose confessions too were got recorded by C.B.I. The learned Attorney General, however disputes any such obligation but submits that the investigation officer has explained all these circumstances in his evidence and that he was cross-examined by accused at great length. His evidence runs into 200 pages, he said. The learned Attorney General objected to these grounds being raised now on the ground that there is no foundation for these submissions in the writ petition. We find it difficult to express any opinion on this submission of Mr. Jethmalani for the reason that it is directly in issue in the criminal revision now pending in Delhi High Court apart from the fact that no such contention is raised in the writ petition. Suffice to say, in its present disputed state, it does not furnish a valid ground for quashing the entire proceedings in the circumstances of the case.

Mr. Jethmalani also emphasised an unusual feature of this case namely, the charges and counter-charges levelled by C.B.I. and Bihar C.I.D. of false implication and frame-up against each other. He says that according to Bihar

A C.I.D. the C.B.I. is guilty of frame-up against the members of Anand Marg, while according to C.B.I. the Bihar C.I.D. has been deliberately proceeding against innocent persons while letting off the real culprits. But we are at a stage where the prosecution has completed its evidence and the only thing remaining is the examination of the accused and the recording of defence evidence, if any. Of course, if the criminal revision filed by the petitioner in the Delhi High B Court succeeds such of the witnesses as may be permitted by court, will also be examined as court witnesses. Be that as it may, the fact remains that a major part of the trial is over. The petitioner has been released on bail by this court as far back as 13th March, 1978. A proper disposal of the case alone will bring out the truth. Thus, on a consideration of circumstances appearing for and against, we are of the opinion that quashing of the charges and/or criminal C proceedings at this stage would not be just and proper. The proper order to make in this case is to request the Delhi High Court to dispose of Criminal Revision No. 191 of 1986 as early as possible, preferably within a period of two months from the date of copy of this order is communicated to it. After the Criminal Revision Petition is disposed of, the trial Judge will take up the matter and proceed with it with as much expedition as possible in the circumstances D and preferably on a day-to-day basis.

57. Writ Petition No. 833 of 1990 and Writ Petition No. 268 of 1987 are accordingly dismissed with the directions aforementioned. Criminal Appeal No. 126 of 1987 preferred by State of Bihar against the judgment of the Full Bench of the Patna High Court is also dismissed for the reasons hereinbefore.

G.N. W.P and Crl. Appeal dismissed.