enforce the debt, it is not legally enforceable debt and would go out of the purview of Section 138 of the N.I. Act. When complaint was filed complainant was not a registered partnership and thus could not have, at that time, filed the complaint. In this view of the matter, the reasonings recorded by the Hon'ble High Court in the matter of Mr. Amit Desai, supra, appear to be apt for consideration of the present matter. Adopting the said view in the matter of Mr. Amit Desai, supra, I find that the trial Court did not err while rejecting the complaint and acquitting the accused. I do not find myself persuaded by the Judgments in the matter of ***Abdul Gafoor and Gurcharan Singh*** (supra). There is no reason to interfere in the acquittal recorded by the trial Court, which is possible view of the matter.

10. In the result, the Appeal is dismissed. The bail bonds of the Respondent-accused are cancelled.

Result:- Appeal dismissed.

ABC 2016 (I) 478 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(A.S. Oka & P.D. Naik, JJ.)
Criminal Application No. 536 of 2015
Decided on 20 April 2016

NITIN BALIRAM KHARATMOL ***- Applicant(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered:- (A) Indian Penal Code, 1860 — Sections 279 & 338 — Motor Vehicles Act, 1988— Section 134 — FIR under — Code of Criminal Procedure, 1973 — Sections 190, 468 & 482 — Period of limitation lapsed — Charge sheet — the record as regards filing not available either with the Police Station or with the Court — Even a copy of the charge sheet not available — Impossible to reconstruct the charge sheet — the Official carried out the investigation retired — Absolutely no possibility of a charge sheet being filed — no possibility of Court taking cognizance of the offence in accordance with Sec. 190, CrPC — Proceedings quashed. (Para 10 & 11)

(B) Constitution of India — Article 21 — Right to speedy trial — Fair, just and reasonable procedure is implicit in Article 21 —

creates a right in favour of an accused— Right to speedy trial is a part of fundamental right conferred by Art. 21. (Para 7)

(C) Constitution of India — Article 21 — Right to speedy trial —Ambit of — Encompasses all the stages — namely the stages of investigation, inquiry, trial, appeal, revision & retrial etc. — inordinately long delay may be taken as presumptive proof of prejudice — n this context, the fact of incarceration of accused will also be a relevant fact — The prosecution should not be allowed to become a persecution—Abdul Rehman Antulay and others Vs. R.S. Nayak and another—referred. (Para 7)

(D) Constitution of India — Article 21 — Right to speedy trial — Criminal Jurisprudence — Duty of the Court — Where there is undue delay — one must have regard to all the attendant circumstances — including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions etc. —Abdul Rehman Antulay and others Vs. R.S. Nayak and another—referred. (Para 7)

(E) Constitution of India — Article 21 — Right to speedy trial —Indian Penal Code, 1860 — Sections 279 & 338 — Motor Vehicles Act, 1988— Section 134 — FIR under — Charge sheet missing — Period of Limitation elapsed — Held, this is a case of gross and undue delay which will certainly cause prejudice to the Applicant — the delay in the proceedings is unreasonable and is certainly fatal — will infringe the fundamental right of speedy trial u/Art. 21. (Para 12)

Facts:- *FIR was registered against the Applicant for the offences punishable u/ss 279 and 338, IPC and Sec. 134, MV Act. He arrested and was released on bail on the same day. Applicant was a driver by profession. Later on he was selected by Bhabha Atomic Research Centre (BARC). The Assistant Personnel Officer of BARC informed the Applicant that on verification of his antecedents, it was revealed that a charge sheet was filed by Police in the Court of Metropolitan Magistrate. By a letter, the Applicant was called upon to submit a copy of the charge sheet and other relevant documents to enable BARC to take appropriate decision.*

In response to the application made by the Applicant, the Senior Inspector of Police of the concerned Police Station informed the Applicant that after examination of the record, it was found that there is no material on record to show whether the said charge sheet was filed in the Court. Thereafter, the Applicant made a miscellaneous application before the Court of Metropolitan Magistrate, praying for discharge/acquittal as the cognizance of the offence complained of was barred by law. The learned

Metropolitan Magistrate rejected the said application. Observing that there is no charge sheet or Police report submitted before him as provided by Sec. 190 CrPC, which is a sine qua non for taking cognizance. He observed that there is no concrete statement whether the charge sheet is filed or not.

The prayer was made by the Applicant in the present application u/s 482. CrPC for quashing the FIR on the ground of gross delay violating his fundamental rights u/Art. 21 of the Constitution. The hon'ble Bombay High Court observed that such delay in the proceedings is unreasonable and accepted the plea of infringement of the fundamental right of the Applicant of speedy trial. It was also observed that there is absolutely no possibility of a charge sheet being filed against the Applicant and quashed the proceedings.

Law of relief:- Unreasonable delay in the proceedings will infringe the fundamental right of speedy trial.

Held:- We have carefully considered the submissions. Fair, just and reasonable procedure is implicit in Article 21 of the Constitution of India which creates a right in favour of an accused. Right to speedy trial is a part of fundamental right conferred by Article 21 of the Constitution. In the case of Lokesh Kumar Jain (supra), after considering the decision of Apex Court consisting of seven Hon'ble Judges in case of ***P.Ramachandra Rao Vs. State of Karnataka (2002)4-SCC578,*** while holding that some of its decisions do not lay down good law, the Apex Court came to the conclusion that the case of ***Abdul Rehman Antulay and others Vs. R.S.Nayak and another (1992)1-SCC-225,*** has been correctly decided. In the case of A.R.Antulay (supra), the Apex Court observed that right to speedy trial flowing from Article 21 of the Constitution of India encompasses all the stages namely the stages of investigation, inquiry, trial, appeal, revision and retrial etc. The Apex Court observed that inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. However, the Apex Court observed that where there is undue delay, one must have regard to all the attendant circumstances including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions etc. The Apex Court also noted that it is usually the accused who is interested in delaying the proceedings. (Para 7)

Hence, going by Section 468 of the Code, the period of limitation for taking cognizance is three years. Sub Section 1 of

Section 468 of the Code provides that except as otherwise provided elsewhere in the Code, no Court shall take cognizance of the offence of the category provided in sub Section(2) after expiry of the period of limitation. By virtue of sub Section 1 of Section 469, in the facts of the present case, the period of limitation will commence from the date of offence, which is 30th November 2005. It is true that under the Code, the Court has certain power to extend the period of limitation. In the present case, the admitted position is that the record as regards filing of charge sheet is not available either with the Police Station or with the Court. Even a copy of the alleged charge sheet is not available. All that the Police have stated is that there is an entry in record to show that on 27th November 2005, the charge sheet was prepared. However, there is no material on record of the R.A.K. Marg Police Station as well as the concerned Metropolitan Magistrate's Court to show that the charge sheet was in fact filed. No record of the case is available. Therefore, it is impossible for the Police to reconstruct the charge sheet. Moreover, the Police Constable who carried out the investigation, has since retired. Therefore, in the facts of the present case, it is apparent from the letters dated 6th July 2013 and 24th December 2014, ExhibitsC and F to the application, that Police officials of R.A.K.Marg Police Station have tried their best to search the record of the case, but the same could not be traced. The same are the statements made in the affidavit of Mr.Kasabe, Senior Police Inspector of R.A.K.Marg Police Station, dated 16th April 2016. (Para 10)

Thus, the scenario which emerges is that there is absolutely no possibility of a charge sheet being filed against the Applicant. The alleged offence is of 30th November 2005. It is alleged that the charge sheet was ready on 27th December 2005. However, the charge sheet has not seen the light of the day. As there is no possibility of a charge sheet being filed in the Court, there is no possibility of Court taking cognizance of the offence in accordance with Section 190 of the Code. (Para 11)

Thus, this is a case of gross and undue delay which will certainly cause prejudice to the Applicant. The letter dated 19th June 2013 at ExhibitB shows that due to the delay, the Applicant could not secure employment with BARC. Therefore, in the facts of the case, the delay in the proceedings is unreasonable and is certainly fatal, as such delay will infringe the fundamental right of the Applicant of speedy trial under Article 21 of the Constitution of India. In fact, in the

present case, there is absolutely no possibility of trial being conducted against the Applicant. (Para 12)

Counsel:- ***For Applicant(s):*** *Mr.Vivek Sambhaji Baber, Advocate.*

For Respondent(s): *Ms.M.H. Mhatre, APP.*

Cases Referred:-

1. *Lokesh Kumar Jain Vs. State of Rajasthan (2013)11-SCC-130. (Para 6)*
2. *P.Ramachandra Rao Vs. State of Karnataka (2002)4-SCC578. (Para 7)*
3. *Abdul Rehman Antulay and others Vs. R.S.Nayak and another (1992)1-SCC-225. (Para 7)*

JUDGMENT

A.S. OKA, J.: - 1. Rule. Learned APP waives service for the Respondent. Forthwith taken up for final disposal.

2. First Information Report (`FIR') was registered being CR No.355 of 2005 on 30th November 2005 at R.A.K. Marg Police Station, Mumbai against the Applicant for the offences punishable under Sections 279 and 338 of Indian Penal Code (`IPC') and under Section 134 of the Motor Vehicles Act, 1988. In this application under Section 482 of the Code of Criminal Procedure, 1973 (`Code'), it is disclosed that on 30th November 2005 itself, the Applicant was arrested and was released on bail on the same day. It is pointed out that the Applicant is a driver by profession. He made an application for employment to Bhabha Atomic Research Centre (`BARC'), at Mumbai. It is claimed that the Applicant was selected by BARC. The Applicant is relying on the letter dated 19th June 2013 (ExhibitB to the petition), in which the Assistant Personnel Officer of BARC informed the Applicant that on verification of antecedents of the Applicant, it was revealed that in CR No.355 of 2005, a charge sheet was filed by Police in the Court of Metropolitan Magistrate, Dadar, Mumbai on 27th December 2005. By the said letter, the Applicant was called upon to submit a copy of the charge sheet and other relevant documents to enable BARC to take appropriate decision.

3. In response to the application made by the Applicant on 1st July 2013, the Senior Inspector of Police of R.A.K. Marg Police Station, by letter dated 6th July 2013 informed the Applicant that Police Constable Sangle completed the investigation into the offence and charge sheet was prepared on 27th December 2005. He stated that after examination of the record, it was found that there is no

material on record to show whether the said charge sheet was filed in the Court.

4. The Applicant made a miscellaneous application before the Court of Metropolitan Magistrate, 13th Court, Dadar, Mumbai praying for discharge/acquittal as the cognizance of the offence complained of was barred by law. On 24th December 2014, the Senior Inspector of Police of R.A.K.Marg Police Station submitted a report to the Court of Metropolitan Magistrate. In the said report it is stated that though charge sheet against the Applicant was prepared on 27th December 2005, there was no record available with the Police whether the charge sheet was filed. It is pointed out that even the record of the Court was examined but it was not revealed whether the charge sheet is filed. The letter records that Police Constable Sangle is already retired and no information could be obtained from the retired Police Constable. By order dated 12th February2015, the learned Metropolitan Magistrate rejected the said miscellaneous application of the applicant. While rejecting the application, the learned Magistrate observed that there is no charge sheet or Police report submitted before him as provided by Section 190 of the Code, which is a sine qua non for taking cognizance. He observed that there is no concrete statement whether the charge sheet is filed or not. In paragraph 3 of the order, he observed that as per Section 468 of the code, there was limitation of three years to take cognizance of an offence. He also observed that under Section 467 of the code, the period of limitation could have been extended. He reiterated that as there is no charge sheet filed and there is no report filed by Police, there is no question of taking cognizance. Further he observed that though there may be an infringement of provisions of sub Section 5 of Section 167 of the Code, that itself will not vitiate the proceedings. Lastly the learned Magistrate observed that as there is no order taking cognizance, the application cannot be entertained.

5. There is an affidavit dated 16th April 2016 filed by Mr.Siddharth Krushnarao Kasabe, Senior Inspector of Police attached to R.A.K.Marg Police Station, Mumbai. In the said affidavit, the affiant has stated that the record pertaining to the said crime is not available with the Police Station as well as in the Court of Metropolitan Magistrate, 13th Court, Dadar, Mumbai. He has stated that the affidavit is being filed only on the basis of the Crime Register. He has stated that though the record shows that the charge sheet was prepared on 27th December 2005, there is no record available showing

actual submission thereof in the Court. There is no record available to show that the charge sheet was kept in the records of Police Station. It is stated that a search has been taken by the officers of the records of the Police Station as well as records of the Court, but the charge sheet could not be traced out.

6. The prayer made by the Applicant in the present application under Section 482 of the Code is for quashing the FIR on the ground of gross delay which violates his fundamental rights under Article 21 of the Constitution of India. He has relied upon several decisions of the Apex Court including the decision in the case of ***Lokesh Kumar Jain Vs. State of Rajasthan (2013)11-SCC-130.*** He submitted that considering what is stated in the affidavit filed on record, there is no possibility of a charge sheet being filed against the Applicant and, therefore, this is a fit case to exercise the power under Section 482 of the Code.

7. We have carefully considered the submissions. Fair, just and reasonable procedure is implicit in Article 21 of the Constitution of India which creates a right in favour of an accused. Right to speedy trial is a part of fundamental right conferred by Article 21 of the Constitution. In the case of Lokesh Kumar Jain (supra), after considering the decision of Apex Court consisting of seven Hon'ble Judges in case of ***P.Ramachandra Rao Vs. State of Karnataka (2002)4 -SCC578,*** while holding that some of its decisions do not lay down good law, the Apex Court came to the conclusion that the case of ***Abdul Rehman Antulay and others Vs. R.S.Nayak and another (1992) 1-SCC-225,*** has been correctly decided. In the case of A.R.Antulay (supra), the Apex Court observed that right to speedy trial flowing from Article 21 of the Constitution of India encompasses all the stages namely the stages of investigation, inquiry, trial, appeal, revision and retrial etc. The Apex Court observed that inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. However, the Apex Court observed that where there is undue delay, one must have regard to all the attendant circumstances including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions etc. The Apex Court also noted that it is usually the accused who is interested in delaying the proceedings.

8. Now, the issue to be decided is whether in the facts of the present case, due to inordinately long delay, whether the fundamental right of the Applicant under Article 21 of the Constitution of India has been infringed?

9. The first offence alleged against the Applicant is under Section 279 of IPC which is punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. The second offence alleged against the Applicant is punishable under Section 338 of IPC, which is punishable with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both. The third offence alleged against the Applicant is under Section 134 of Motor Vehicles Act, 1988. The maximum punishment prescribed under Section 177 of the Motor Vehicles Act, 1988 for the first offence is fine which may extend to Rs.100/. For any second or subsequent offence, the fine shall extend to Rs.300/.

10. Hence, going by Section 468 of the Code, the period of limitation for taking cognizance is three years. Sub Section 1 of Section 468 of the Code provides that except as otherwise provided elsewhere in the Code, no Court shall take cognizance of the offence of the category provided in sub Section(2) after expiry of the period of limitation. By virtue of sub Section 1 of Section 469, in the facts of the present case, the period of limitation will commence from the date of offence, which is 30th November 2005. It is true that under the Code, the Court has certain power to extend the period of limitation. In the present case, the admitted position is that the record as regards filing of charge sheet is not available either with the Police Station or with the Court. Even a copy of the alleged charge sheet is not available. All that the Police have stated is that there is an entry in record to show that on 27th November 2005, the charge sheet was prepared. However, there is no material on record of the R.A.K.Marg Police Station as well as the concerned Metropolitan Magistrate's Court to show that the charge sheet was in fact filed. No record of the case is available. Therefore, it is impossible for the Police to reconstruct the charge sheet. Moreover, the Police Constable who carried out the investigation, has since retired. Therefore, in the facts of the present case, it is apparent from the letters dated 6th July 2013 and 24th December 2014, ExhibitsC and F to the application, that Police officials of R.A.K.Marg Police Station have tried their best to search

the record of the case, but the same could not be traced. The same are the statements made in the affidavit of Mr.Kasabe, Senior Police Inspector of R.A.K.Marg Police Station, dated 16th April 2016.

11. Thus, the scenario which emerges is that there is absolutely no possibility of a charge sheet being filed against the Applicant. The alleged offence is of 30th November 2005. It is alleged that the charge sheet was ready on 27th December 2005. However, the charge sheet has not seen the light of the day. As there is no possibility of a charge sheet being filed in the Court, there is no possibility of Court taking cognizance of the offence in accordance with Section 190 of the Code.

12. Thus, this is a case of gross and undue delay which will certainly cause prejudice to the Applicant. The letter dated 19th June 2013 at ExhibitB shows that due to the delay, the Applicant could not secure employment with BARC. Therefore, in the facts of the case, the delay in the proceedings is unreasonable and is certainly fatal, as such delay will infringe the fundamental right of the Applicant of speedy trial under Article 21 of the Constitution of India. In fact, in the present case, there is absolutely no possibility of trial being conducted against the Applicant.

13. Hence, considering the peculiar facts of the case, this is a fit case to exercise the power under Section 482 of the Code for quashing the FIR. Accordingly, the application must succeed and we pass following order :

(I) Rule is made absolute in terms of prayer clauses (A) and

(B) which read thus :

(A) That the Hon'ble Court may be pleased to quash and set aside the C.R.No.355.2005 lodged against the Applicant at RAK Marg Police Station, Mumbai on 30.11.2005 for offences punishable u/s. 279, 338 of IPC and Section 134(a) of the Motor Vehicles Act, 1988;

(B) The Hon'ble Court may be pleased to quash all proceedings if any have arisen out of C.R.No.355 of 2005.

(II) All concerned to act on an ordinary copy of this order duly authenticated by registry of this Court.

Result:- Application allowed.