**(AFR)**

**(Reserved)**

**Court No. - 23**

**Case :- U/S 482/378/407 No. - 2936 of 2012**

**Petitioner** :- Ameer Haider
**Respondent :-** The State Of U.P And Anr.
**Petitioner Counsel :-** Syed Mohd. Munis Jafari
**Respondent Counsel :-** Govt. Advocate

**Hon'ble Sudhir Kumar Saxena,J.**

1. This petition under Section 482 Cr.P.C. has been filed for direction to expedite and conclude the trial of Case No. 2250 of 2000, Crime No. 108 of 2000, P.S. Mawai, District Faizabad, under Section 3/25 Arms Act (State Vs. Ameer Haider), pending in the court of A.C.J.M.-I, Faizabad, within two months.

**FACTS:**

2. It appears that a country-made Pistol and one Cartridge of 315 Bore was allegedly recovered from the petitioner. Since occurrence had taken place during night hours, no public witness was available. Case was registered under Section 3/25 Arms Act ('Act' in short). After investigation, chargesheet was submitted on 19.10.2000 and on the same day cognizance was taken.

3. It was urged that even after 12 years, neither any witness has been examined nor trial concluded, as such, continuance of proceedings amount to abuse of the process of the Court and same are liable to be quashed.

4. A report was called from the court concerned. Court below in its report dated 27.08.2012 stated that charge was framed on 05.06.2004. Since case was transferred before different courts, no evidence could be recorded, case reached his court on 25.01.2012. He was holding additional charge of Nodal Officer of Computers which also caused delay.

5. Copy of ordersheet has been filed with the petition which

shows that although chargesheet was submitted and cognizance was taken on 19.10.2000 but charge could be framed on 05.06.2004. This Court took four years to frame the charge. Then for 8 years, the case continued to be posted for prosecution evidence but not one witness could be examined. What is more strange is that dates were fixed without there being any reason or motion therefor.

6. Some orders of different dates are being quoted hereinbelow:

> "**25.10.2004:** पेश हुआ अभियुक्त हाजिर। **आदेश:** पत्रावली साक्ष्य हेतु दिनांक 29.01.2005 को पेश हो।
>
> **29.01.2005:** अभियुक्त की हा0 माफी स्वीकृत। **आदेश:** वास्ते साक्ष्य हेतु दिनांक 28.04.2005 को पेश हो।
>
> And similarly ordersheet continued on 14.02.2006.
>
> **14.02.2006:** पेश हुआ। अभि0 उपस्थित। **आदेश:** दिनांक 20.03. 2006 को साक्ष्य हेतु पेश हो। गवाहान तलब।
>
> **17.08.2007:** पुकार पर अभियुक्त उप0। गवाह अनु0। **आदेश:** दिनांक 03.10.2007 को वास्ते साक्ष्य पेश हो। गवाहान तलब हों।
>
> **16.5.2008:** पुकारा गया। मुलजिम की हा0 माफी। साक्षी अनु0। **आदेश:** दिनांक 11.07.2008 को वास्ते साक्ष्य पेश हो। साक्षी तलब हों।
>
> **04.05.2009:** वाद पुकारा गया। अभियुक्त अनुपस्थित है। **आदेश:** अभियुक्त दिनांक 08.06.2009 को जरिए NBW तलब हों।"

7. It is also apparent from the ordersheet that not one adjournment was granted on the request of prosecution. Court granted adjournment of its own. There is no mention that prosecution moved application for adjournment. There is no order of issuing bailable warrants or non-bailable warrants against the prosecution witnesses and no order imposing the cost for non-presence of prosecution witnesses has been passed by the court. Nearly, 83 dates have been fixed in the case.

8. Although copies of the prosecution papers were given to the accused on 08.06.2002 but charge was framed after two years ***which could have been done on the same day.***

9. Accused has appeared nearly on 25 dates. Once for his non-appearance, non-bailable warrant was issued which was later on recalled. Not once warrant has been issued against any prosecution witness nor cost has been imposed or paid to the accused, although all-through except on one date, the accused or his counsel had appeared.

10. Initially, chargesheet was filed before A.C.J.M.-IV on 27.07.2002, case was transferred to the court of First Civil Judge(J.D.). It appears that case was again sent to the court of A.C.J.M.-IV on 19.12.2003. On 20th August, 2006, case was transferred to the court of Judicial Magistrate-I. On 16.04.2008, case was transferred to the court of A.C.J.M.-I. On 16.01.2009, case was transferred to the court of Judicial Magistrate-III. On 10.12.2010, case was transferred to the court of A.C.J.M.-II. On 20.04.2011, case was transferred to the court of Judicial Magistrate-I where it is continuing.

11. Ironically, the revelation made from the ordersheet are startling. Magistrate took two years to provide copies to the accused and four years to frame charge; and for 8 years case is continuing for the prosecution evidence but not one witness could be examined. Case was transferred to five courts during this period.

12. It is further strange to note that all the adjournments have been granted without any application moved for adjournment by the prosecution. There is no gainsaying that large number of cases filed under the Arms Act are receiving similar treatment.

13. A report was called from the Registrar General about the total number of cases pending under Sections 3/25 and 4/25 Arms Act.

**FIGURES:**

14. According to report sent by Registrar General, 184655

cases are pending, oldest being of the year, 1977. Number of pending cases from the year 1977 to 2012 (as on 30.06.2012 )are as under:

| YEAR | CASES | YEAR | CASES | YEAR | CASES | YEAR | CASES |
|---|---|---|---|---|---|---|---|
| **1977** | 7 | **1986** | 640 | **1995** | 3510 | **2004** | 7987 |
| **1978** | 13 | **1987** | 787 | **1996** | 3943 | **2005** | 9319 |
| **1979** | 25 | **1988** | 791 | **1997** | 4828 | **2006** | 10524 |
| **1980** | 83 | **1989** | 1020 | **1998** | 4666 | **2007** | 12436 |
| **1981** | 88 | **1990** | 1286 | **1999** | 4476 | **2008** | 15698 |
| **1982** | 144 | **1991** | 1645 | **2000** | 5260 | **2009** | 17941 |
| **1983** | 215 | **1992** | 2080 | **2001** | 6275 | **2010** | 19615 |
| **1984** | 291 | **1993** | 2340 | **2002** | 6843 | **2011** | 19072 |
| **1985** | 349 | **1994** | 2859 | **2003** | 8012 | **2012** | 9587 |

**Total:- 184655**

15. Sri Rishad Murtaza, learned Government Advocate stated that most of the crimes are committed with the help of unauthorized arms and non decision of such cases is posing serious problems of law and order before the State Government. He urged that some mechanism may be developed so that these cases may be disposed of in a fix time otherwise the dilatory tactics adopted for dragging on the proceedings may snap the justice delivery system.

16. Counsel for the petitioner urged that Police used these provisions as preventive measure and in most of the cases innocent persons are implicated which is evident from the rate of acquittal.

17. This Court for taking comprehensive view of the matter called for the suggestions from State Government and from the Director General Prosecution.

18. Director, Institute of Judicial Training & Research was also requested to give the feed back as to what are the reasons for

delay in disposal of such cases and the suggestions to improve this malady as perceived by judicial officers of State.

19. Before adverting to the legal position in this regard, it would be useful to record the suggestions given by the prosecution department of the State, petitioners counsel and Magistrates through Judicial Training Institute (IJTR).

**FEED BACK:**

20. Following reasons were given by State Judicial Training and Research Institute (JTRI in short) for delay:

A). Witnesses in these cases are generally police personnel, and they do not turn up for examination before court, due to their transfer from the District.

B). Case material is not produced in time or on date fixed for examination of witness. This causes undue adjournment of trial resulting in delay.

C). Difficulty in service of processes is also a reason, as in most of the cases the officers of police who are witnesses in the matter are transferred or retired and their actual place of abode is not known to the prosecution.

D). The prosecution does not take much interest in producing witnesses.

E). The quantum of out turn prescribed for disposal of such cases is not sufficient to motivate officers for speedy disposal.

21. Following suggestions have been given by IJTR:

1. Permanent address of police personnel should be mentioned in the chargesheet, so that they may be traced even after their retirement.
2. The prosecution officers should be made more accountable for disposal and long pendency of cases.

3. There should be a time limit for production of evidence and unlimited time should not be provided to the prosecution.

4. The process service system should be made more effective and accountable, and also that latest means of communication should be adopted, i.e. through e-mail, SMS to the official number of the police personnel who is witness in the case.

5. An on-line data base of all the police personnel should be prepared with their present place of posting and other details to communicate, with latest updates.

22. Additional Director General Prosecution, State of U.P. Has given some suggestions which are summarized as under:

1. Especially earmarked criminal courts for trying sensitive criminal cases be established. Additional civil courts be not burdened.

2. Only two and three courts may be earmarked for this purpose.

3. Name of witnesses who come to court should be registered in some register of the court whether their testimony is recorded or not.

4. The witnesses, who come to court and are not paid travelling allowance, should also be paid allowance even if their testimony is not recorded and the same be paid in the mode of single window system.

5. The witnesses who appear in the court as witness are forced to sit with the accused persons in Verandah where they are exposed to threats by the accused and their associates, as such proper sitting arrangement of witnesses should be made by making 'Witness Room'.

6. Proper sitting arrangement of public prosecutor be made in

every court as they have to vacate their seats whenever advocates arrive. There is no provision of sitting place for public prosecutor which causes a lot of humiliation.

7. Police personnel should take full interest for ensuring the presence of witnesses but they do not take interest on the grounds of other engagement and law & order problems. There should be a column in annual confidential report regarding their interest in the prosecution of the cases and presence of witnesses. While recording ACRs of SP, DIG and IG, comment of DG/ADG prosecution be also obtained. In this regard, necessary direction should be issued by the State Government. In the chargesheet/final report, PNO no. of police personnel and address of the witness in the case alongwith their Mobile numbers be also entered.

8. In the old chargesheet or final reports, if PNO no. or address is not recorded, the same can be obtained with the help of investigating wings.

9. In the cases where witness comes from long, the date should be fixed so that his testimony should be recorded in all the cases and he should not be asked to come frequently. If for some reasons witness is not in a position to attend the court he should inform court/prosecutor in advance alongwith proposed date on which he would be available so that next date be fixed in time with his convenience. If Supervisory officer does not permit witness to leave the station for giving testimony, he would inform the court as to the date on which he would be available so that next date may be fixed as per his convenience.

He has also placed the material showing that cases under the Arms Act have been taken on priority basis in Bihar where Law and Order has shown tremendous improvement.

23. Learned counsels at the Bar submitted that it is evident from the experience that most of the litigants under Section 3/25 and 4/25 Arms Act belong to poorer section of the society and, therefore, they deserve better deal. It is further submitted that hardly any case results in conviction, as such ordeal of such accused should be done away with or limited to a fix period and for this purpose necessary directions may be issued.

24. From the above, it can be said that delay in disposal of such cases is caused mainly due to following reasons:

1. Case property is not produced during trial
2. Prosecution witnesses are not produced by the prosecution although most of them are police personnel.
3. Lack of requisite sensitivity on the part of judicial officer while dealing with such cases.

25. In the present case, although chargesheet was submitted in the year, 2000 but Magistrate took two years to supply the copies and four years to frame charge. Further, during the entire period i.e. 12 years, nothing has been done to procure the presence of witnesses by issuing bailable or non-bailable warrants or imposing cost. Court has passed the orders in routine manner. This shows lack of sensitivity on the part of judicial officer.

**PRECEDENTS:**

26. Early decision of a criminal case is always in the interest of prosecution, accused, State and society as a whole.

27. Apex Court in the case of **Imtiyaz Ahmad Vs. State of U.P. and others [(2012) 2 SCC 688]** has expressed its concern over delay in disposal of cases, in para 28 and 29 as under:

> "28.....It is almost of as much importance that the court of first instance should decide promptly as that it should decide right. It should be noted that everything which tends to prolong or delay litigation between individuals, or between

> individuals and State or Corporation, is a great advantage for that litigant who has the longer purse. The man whose rights are involved in the decision of the legal proceeding is much prejudiced in a fight through the courts, if his opponent is able, by reason of his means, to prolong the litigation and keep him for years out of what really belongs to him.
>
> 29. Dispatch in the decision-making process by court is one of the great expectations of the common man from the judiciary. A sense of confidence in the courts is essential to maintain the fabric of order and liberty for a free people. Delay in disposal of cases would destroy that confidence and do incalculable damage to the society; that people would come to believe that inefficiency and delay will drain even a just judgment of its value; that people who had long been exploited in the small transactions of daily life come to believe that courts cannot vindicate their legal rights against fraud and overreaching; that people would come to believe that the law in the larger sense cannot fulfill its primary function to protect them and their families in their homes, at their workplace and on the public streets."

28. In the case of **Vakil Prasad [2009 (3) SCC 355],** Hon'ble Apex Court observes:

> "The right to speedy trial in all criminal proceedings is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigation as well."

29. In the case of **Ranjan Dwivedi Vs. C.B.I. [(2012) 8 SCC 495],** Hon'ble court observed in para 20 the need for speedy trial in following words:

> "The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a three fold purpose. Firstly, it protects the accused against oppressive pre-

> trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend him or herself. Stated another way, the purpose of both the criminal procedure rules governing speedy trials and the constitutional provisions, in particular, Article 21, is to relieve an accused of the anxiety associated with a suspended prosecution and provide reasonably prompt administration of justice."

30. This Court is conscious that time limit can not be fixed for decision of such cases. Some discussion regarding cases decided by Apex Court is deemed necessary at this juncture.

31. In the case of **Hussainara Khatoon (I) Vs. Home Secretary, State of Bihar, [(1980) 1 SCC, page 81]** right to speedy trial has been found to be implicit in the spectrum of Article 21 and Apex Court went on to say that financial constraints or priorities in expenditure would not enable the Government to avoid its duty to ensure speedy trial.

32. A constitution Bench of Apex Court in the case of **Abdul Rehman Antulay Vs. R.S. Nayak [(1992) 1 SCC, page 225]** has dealt with this question at great length expressing that court may pass such appropriate order as may deem just in the circumstances of the case where quashing of charges may not be in the interest of justice.

33. In para 86, number of propositions were laid down by Constitution Bench. Relevant propositions are para 1, 2, 3, 6, 7, 8, 9 and 10 can be usefully quoted as under:-

> 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 social interest also does not make it any the less the right of the accused. It is in the interest of all concerned that the quilt 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.

(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 idea has been stated by whitel, J. in U.S. V. Ewell 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 more speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional 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 relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

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 accused'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 USA, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases.

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 cases.

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 maybe, 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. (emphasis supplied)

(10) It is neither advisable nor practicable to fix any timelimit 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 USA too has repeatedly refused to fix any such outer timelimit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

34. 'Section 309 of the Cr.P.C. reflects the constitutional guarantee of speedy trial', was observed by Constitution Bench in the case of **Kartar Singh Vs. State of Punjab [(1994) 3 SCC, page 569].**

35. In the case of **Raj Deo Sharma Vs. State of Bihar [(1998) 7 SCC, page 507]** in para 16, Hon'ble Apex Court interpreted Section 309(1) of Cr.P.C. as under:

> "16. The Code of Criminal Procedure is comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses inspite of repeated opportunities. Section 309(1) Cr. P.C. Supports the above view as it enjoins expeditious holding of the proceedings and continuous examination of witnesses from day today. The section also provides for recording reasons for adjourning the case beyond the following day."

36. Apex Court laid down five supplemental propositions to those laid down by constitution bench in **Antulay case.** These propositions are quoted as under:

> "(i) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.
>
> (ii) In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall

release the accused on bail forthwith on such conditions as it deems fit.

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.

(iv) But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses (i) to (iii).

(v) Where the trial has been stayed by orders of court or by operation of law such time during which the stay was in force shall be excluded from the aforesaid period for closing prosecution evidence.

The above directions will be in addition to and without prejudice to the directions issued by this Court in "Common Cause" Vs. Union of India as modified by the same bench through the order reported in "Common Cause" a registered Society Vs. Union of India."

37. These directions were further clarified by the majority judgment in the case of **Raj Deo Sharma Vs. State of Bihar [(1999) 17 SCC, 604].** Hon'be Court clarified the discretion of the court in granting further time for very exceptional reasons to be recorded in the interest of justice. Period of absence of Presiding Officer can also be excluded. Bench in Para 12 of the judgment observed that provisions of Section 309 enjoin every trial court to continue examination of witnesses from day to day until the witnesses in attendance have been completed and in Para

13 Court observed as under:

> "The concept of speedy trial is read into Article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of criminal Procedure ...
>
> Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon the show the actual prejudice by delay of disposal of cases. On the other hand, the Court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) lengthof delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will very, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court etc."

38. This Court cannot permit the trial court to flout the said mandate of Parliament unless the court has very cogent and strong reasons. No court has permission to adjourn examination of witnesses who are in attendance beyond next working day. The judgment given in the case of **Raj Deo Sharma** came to be

considered by Hon'ble Seven Judges of Apex Court in the case of **P. Ramachandra Rao Vs. State of Karnataka [(2002) 4 SCC 578.** In para 20 Court observes:

> "For non-service of summons/orders and non-production of undertrial prisoners, the usual reasons assigned are shortage of police personnel and police people being busy in VIP duties or law and order duties. These can hardly be valid reasons for not making the requisite police personnel available for assisting the Courts in expediting the trial. The members of the Bar shall also have to realize and remind themselves of their professional obligation legal and ethical, that having accepted a brief for an accused they have no justification to decline or avoid appearing at the trial when the case is taken up for hearing by the Court."

39. In paragraph 21, courts were reminded of their power under Section 309 Cr.P.C. The relevant observations are quoted hereinunder :

> "Is it at all necessary to have limitation bars terminating trials and proceedings? Is there no effective mechanisms available for achieving the same end? The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression. Section 309, dealing with power to postpone or adjourn proceedings, provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same to 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 reasons to be recorded. Explanation-2 to Section 309 confers power on the Court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the Courts."

40. Lastly, Court found that prescribing period of limitation at the end of which trial court would terminate the proceedings amounts to legislation which is not within the domain of judiciary.

41. Similar view has been taken in the case of **Sudarshan Acharya Vs. Purushottam Charya and another (2012) 9 SCC 241 (para18).**

42. In para 29 of the **P. Ramachandra Rao (supra)** the court held that time limit to conclude trial cannot be prescribed by the Apex Court. Relevant observations made in para 29 are reproduced hereunder:

> "(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused. (emphasis supplied)
>
> (5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and

> diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions."

43. From the above, it is clear that time limit prescribed in **Raj Deo Sharma case** can be taken as a reminder, when courts should apply their judicial mind to pass appropriate order treating the proceedings to be oppressive and unwarranted. It can also be inferred from the above that trial courts were reminded of their powers under Section 309, 311 and 258 of Cr.P.C.

44. From the above, it is certain that courts cannot prescribe any time limit to conclude the trial, however, Apex Court has reminded the trial court of its powers conferred under Section 309 and 311 Cr.P.C. So far as Section 309 and 311 Cr.P.C. are concerned, this Court in the case of **Dildar** has taken a view that provisions are mandatory in nature although experience shows that it had been followed more in breach. Relevant observations made by this Court in the case of **Dildar and others Vs. State of U.P. [2012 (1) JIC 748 (ALL) (LB)]** are being quoted below:

> "5. It is apparent that once witness is in attendance, adjournment has to be refused and has to be granted very rarely and in exceptional circumstances for which special reasons have to be recorded. Even if case is to be adjourned for some reasons then adjournment would be granted only till next day. It is also evident that engagement of lawyer in other court is not a ground for adjournment and court is not supposed to wait for counsel, if witness is present in the court. The court is left with no option but to record the statement of witness and pass further orders dispensing with the cross-examination.
>
> 12. Once witness is in attendance they should not be returned unexamined, keeping in view the provisions of Section 309 Cr.P.C. as amended. Section 309 Cr.P.C. permits adjournments for special reasons. Section 309(2) Cr.P.C., excludes certain

> reasons like engagement of counsel in other Courts etc. A joint reading of Section 309(1) and Section 309(2) Cr.P.C would show that the intention of legislature is unambiguous i.e. once witness comes to court he should be examined. If adjournment is necessary, then case can be adjourned to next day but that too for special reasons like sudden violence, incapability of witness on account of illness etc.
>
> 14. Strike of lawyers, engagement of counsel in other cases or engagement of fresh counsel are definitely the reasons not contemplated under Section 309 Cr.P.C. and Trial court would see that no case be adjourned on this ground. If witnesses are present in the court, Sessions Judge would ensure that the courts working under them do not return the witnesses unexamined."

45. Right to speedy trial flowing from Article 21encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision etc. A Constitution Bench in the case of **A.R. Antuley** holds that there is no reason to take restricted view of the right to speedy trial.

46. From the above, it can be safely summarized:

(a) **A.R. Antulay's** case makes it 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." (para 86).

(b) In **Raj Deo Sharma II** case in para 16 Hon'ble Apex Court enable " the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses inspite of repeated opportunities. Section 309(i) Cr.P.C. supports the above view."

(c) In **P. Ramchandra Rao** case, Hon'ble court finds Section 309 Cr.P.C. as effective mechanism for achieving the goal of speedy trial (para 21). In Para 29 court mandates that " criminal courts should exercise their available powers under Section 309, 311, 258 Cr.P.C. to effectuate the right of speedy trial". Seven Judges Bench of Apex Court did not overrule Raj

Deo Sharma's view to close the prosecution if despite repeated opportunities evidence is not led. On the other hand, time limit prescribed by Raj Deo Sharma's case has been permitted to be treated as reminders “where they may be persuaded to apply their judicial mind” and decide whether on account of delay proceedings have become oppressive and unwarranted.

**CONCLUSIONS:**

47. Punishment for violation of Section 3 and 4 is provided under Section 25 of the Arms Act. In the present case court is dealing with cases under Sections 3/25 and 4/25 of the Arms Act alone. Relevant part of Section 25 is being quoted below:

> "(1B) Whoever-
>
> (a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or
>
> (b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or
>
> ….....
>
> ….....
>
> shall be punishable with imprisonment for a term which shall not be less than [one year] but which may extend to three years and shall also be liable to fine;
>
> Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than [one year].
>
> [(1C) Notwithstanding anything contained in sub-section (1B) whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

From the above, it is apparent that maximum sentence for such offences is 3 years. For “disturbed area” it could be a

maximum period of seven years, which is not a case here.

48. After considering the suggestions given by Judicial Officers of the State through J.T.R.I., Bar and the Additional Director General Prosecution, which are mostly common, it is clear that a duty is cast upon the State not only to examine the prosecution witnesses but also to ensure that case property is produced at the time of examination of prosecution witnesses. For ensuring the presence of prosecution witnesses, somewhere responsibility has to be fixed upon the prosecution incharge of the District. In every district there is a Prosecution Officer. In some districts there is Joint Director of Prosecution. He is supposed to ensure that prosecution witnesses are examined immediately after framing of charge. It is also expedient as by that time police officials may not have been transferred out of the district and should be available for the evidence.

49. There is no reason to assume that police chief of district will not ensure the examination of police personnel and other witnesses whenever court issues summons or warrants, although very often they are not served. Nevertheless District police chief SP/SSP will ensure examination of prosecution witnesses by affecting service of summons or warrants without any delay.

50. Magistrate will also have to ensure that as soon as chargesheet is filed, copies are provided, charge is framed and immediately after framing of charge summons are issued for next date for evidence. Cases will be adjourned for evidence only when adjournment is sought by the prosecution officer. Case will not be adjourned without there being an application from prosecution or defence and if Court finds that repeated adjournments are sought by the prosecution, it will be fully justified in imposing the cost or closing evidence. However, before closing evidence, Magistrate will send letter to prosecution officer and police chief of the district with copy to D.G./A.D.G.

prosecution informing them that summons/warrants have not been served or despite service, witnesses have not come forward. If after sending letter to prosecution and police head of the district, witnesses do not come, Magistrate would not only be justified but duty bound to close evidence so as to end the ordeal of accused.

51. Maximum punishment for the cases under Sections 3/25 and 4/25 of the Act is three years, thus, where the 2 years period from the date of charge expires and trial is still pending, it would be open for the trial courts to apply their judicial mind in the facts and circumstances of the case, do balancing act and determine whether proceedings have become oppressive and unwarranted and whether it has reached a stage where court should think of proceeding under Section 309 Cr.P.C. If for these years State has failed to produce the evidence, court is not enjoined to wait for indefinite period. Unless there are exceptional reasons, court would be fully justified in closing the prosecution evidence and proceed further.

52. Figures supplied by the Registry shows that more than 1.5 lac cases under Section 3/25 and 4/25 of the Arms Act are pending before the Magistrates which are more than three years old. At least these are the cases where according to Constitution Bench judgment given in the case of **P. Ramchandra Rao** read with **Raj Deo Sharma** an occasion has come to look back whether stage has not reached to do balancing act, refuse adjournment, close evidence and proceed accordingly. No general direction can be issued in this regard but if court finds that prosecution has without any convincing reason failed to produce evidence for two years after charge, especially when most of the witnesses are police personnel, Magistrate would be fully justified in closing the evidence. If at any stage prosecution feels that some material witnesses have become available and are

willing to depose, it can always apply under Section 311 Cr.P.C. to recall/examine the said witness. It is not intended that court is obliged to close evidence after two years of charge. Court has to regulate its own procedure and circumstances of different case may need different treatment. What is being emphasized is that two years in such cases is a reasonable period whereafter Magistrates can act under Section 309 Cr.P.C. and close evidence if need be. It is also not intended that court cannot dispose of the case before two years. Only outer limit is being indicated. This exercise of discretion would be in consonance with the direction issued by the Apex Court in the case of **P. Ramchandra Rao.**

53. In view of the above, in exercise of powers under Sections 482/483 Cr.P.C. read with Article 227 of the Constitution of India, following directions are issued for early disposal of the cases pending under Section 3/25 and 4/25 Arms Act.

1. Immediately on filing the chargesheet, the Magistrate would after ensuring the supply of copies, frame charge. He would issue summons to the prosecution witnesses for the next date under Section 242(3) of Cr.P.C.. This would do away with the time taken in serving the police personnel who might get transferred due to passage of time at a later stage. Summons can be served with the help of S.O., S.H.O. of the police station concerned and summon cell working in the court. If summons are not served or witnesses do not appear even after service, court would do well to issue bailable/non-bailable warrants and notice under Section 350 Cr.P.C. for procuring the attendance of witness. Even after issuance of these process, if witnesses do not turn up, Magistrate would send letter to S.P./S.S.P. of the District, Additional Director/Joint Director/Prosecuting Officer of the District (as the case may be) with a copy to Director/Additional Director

General Prosecution, Lucknow. If there is no response despite these steps, court may in its discretion close the evidence. Further, court may impose costs which it may think proper. Court would not adjourn the case for prosecution evidence if adjournment application is not moved by the prosecution officer. After expiry of two years from charge, Magistrate will act under Section 309 Cr.P.C. showing sense of urgency and it may close the evidence if it is felt that proceedings have become unwarranted. Court may also consider the delay caused on account of absence of Presiding Officer, stay by higher courts and dilatory tactics adopted by accused etc... After closing evidence, if prosecution comes with the evidence, the court may in its discretion summon the same under Section 311 Cr.P.C.

54. D.G. Prosecution/Police would direct all the Investigating Officers to mention the PNO number and mobile number of police witnesses in addition to address and mobile number of other witnesses including doctors. Chargesheet wanting these details may not be accepted by courts.

55. State Government is directed to make District Superintendent of Police and Prosecution Officer responsible for production of witnesses/material in the court and it would give enough supervisory power to the head of the prosecution at the State level like Director General Prosecution or Additional Director General Prosecution who may be given power to assess the performance of district officer, so far as prosecution part is concerned. State Government is directed to develop a mechanism in this regard within three months.

56. The suggestions made by ADG(P) regarding construction of witness room, maintenance of witness register, prompt payment of diet money to witnesses on their arrival, earmarking of criminal courts etc. merit consideration by this Court. ADG(P)

will move detailed representation before Registrar General of the Court for necessary follow up. Matter pertaining to infrastructure will be placed before infrastructure committee for its kind consideration.

57. Let a copy of this judgment be sent to the CJMs/CMM of the State for circulation among the Magistrates for guidance and compliance.

58. Registrar General will continuously monitor the disposal of cases filed under the Arms Act.

59. Court records the valuable assistance given by Director IJTR, ADG (prosecution) and Government Advocate with appreciation.

60. Petition is disposed of accordingly.

**Order Date :- 22/03/2013**
krishna/*