CASE NO.:
Appeal (crl.) 176 of 2001
Appeal (crl.) 177 of 2001
Special Leave Petition (crl.) 447 of 2001
Special Leave Petition (crl.) 2311 of 2000

PETITIONER:
SEETA HEMCHANDRA SHASHITTAL AND ANR.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT: 13/02/2001

BENCH:
R.P.Sethi, K.T.Thomas

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J

J U D G M E N T

THOMAS, J.

Leave granted. Two lady octogenarians feel that there is not much time ahead of them to complete a trial which is yet to begin, and counting the number of years which the investigation consumed for finalising the charge-sheet, the trial would not be anything less than a long drawn out one. The two ladies approached the High Court of Bombay, along with their kinsfolk, who too are arrayed in the same case, one of them as the kingpin, to get the criminal case axed down at the threshold of the trial stage, mainly on the ground of long delay in completing the investigation. But the High Court, instead of snipping down the case charge- sheeted, dismissed the writ petition solely on the ground that in a similar case the High Court refused to countenance similar contention.

The facts, barely necessary for disposal of these appeals, can be stated thus: Appellant Niranjan Hemchandra Shashittal is a Government servant who attained the rank of Deputy Commissioner in the Department of Prohibition and Excise of the Maharashtra Government (he will hereinafter be referred to as the appellant-public servant). Appellant Seeta Hemchandra Shashittal who is now aged 83, and Shanta Subarao Shirali, who is now aged 81, are the mother and mother-in-law of the appellant-public servant, respectively. His wife Anuradha is also an appellant as she too was arrayed as accused.

On the basis of some information received by the Anti Corruption Bureau (ACB for short) a preliminary enquiry was conducted and on 26.6.1986 an FIR was lodged against the appellant-public servant for the offence under Section 5(2) of the Prevention of Corruption Act, 1947. This was immediately followed by raids conducted at the places which

the ACB officials believed to be the buildings of the appellant-public servant situated at Mumbai and Nasik. The raids and certain other enquiries conducted by them revealed that appellant-public servant had acquired assets worth Rs.33.44 lacs, in the year 1986, which were far in excess of his known sources of income. The investigation was completed by the Assistant Commissioner of Police attached to the ACB and he submitted the final report to his superior who was the Director of ACB, in July 1990. After the draft final report was approved the ACB approached the Government of Maharashtra on 6.4.1991 for obtaining sanction to prosecute the appellant-public servant. The Government accorded sanction on 22.1.1993 and thereupon the charge sheet was laid against all the appellants on 4.3.1993 before the Special Court dealing with offences under the Prevention of Corruption Act. The offence alleged against the appellant-public servant was under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The offence alleged against the lady appellants was abetment of the main offence pitted against the appellant-public servant.

All the appellants appeared before the Special Judge on 14.1.1994 when process was issued to them. The next posting in the said court happened to be only after the lapse of one year. On the said day appellants moved some interlocutory applications. After posting the case on different future dates for disposal of such interlocutory applications, the case moved at a slow pace and reached the stage of hearing preliminary arguments for considering whether charge should be framed or not. It was in the aforesaid context that the appellants filed the writ petition before the High Court of Bombay on 15.4.1997 for quashing the criminal proceedings.

The main ground urged in the writ petition is that there was gross delay of 11 years for filing the charge-sheet and that such delay violates Article 21 of the Constitution. According to the appellants, such delay had caused unbearable mental trauma, fear psychosis and tension to them as well as to the other members of the family, besides tremendous humiliation and defamation heaped on them. They also said that the abnormal delay had caused colossal financial losses to the appellants and the impact of it had shattered the prospects of personal, professional and business development of the members of the family.

A Division Bench of the High Court dismissed the writ petition merely because two other writ petitions filed by some others, in some other cases were dismissed. The entire judgment of the Division Bench in the present writ petition is in a cryptic form and the same is extracted below: In view of the common order passed in Criminal Writ Petition No.1642 of 1999 and Criminal Writ Petition No.1742 of 1999, this petition stands disposed of accordingly.

As a copy of the said common order was produced by the appellants we could peruse the same, but the fact situations@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ in those other cases were vastly different from the present case, except the common factor that offences alleged were under the provisions of the Prevention of Corruption Act. Of course, learned counsel for the appellants made a plea before us to remand the writ petition to the High Court for fresh disposal. But we refrain from adopting that shortcut,

lest, that would further protract the already delayed case.

Dr. Rajeev Dhawan, who argued for the old lady appellants, divided the post FIR period of the present case into three different stages. First is the period from 1986 to 1990 which is claimed to be the period taken for investigation. Second is from 1990 to 1993, which is said to be the period taken for obtaining sanction of the Government for laying charge-sheet before the court. Third is the period from 1994 till the date of filing of the writ petition in the High Court in 1997, during which the progress in the trial court was slower than creeping through the process and consequently no charge could be framed until the appellants filed the writ petition before the High Court.

This Court has emphasised, time and again, the need for speeding up the trial as undue delay in culminating the criminal proceedings is antithesis to the Constitutional protection enshrined in Article 21 of the Constitution. Nonetheless the court has to view it from pragmatic perspectives and the question of delay cannot be considered entirely from an academic angle. In other words, the High Court and this Court, when approached by accused to quash proceedings on the ground of delay, must consider each case on its own facts. Unfortunately the delay has so permeated in our legal system that at all levels tardiness has become the leitmotif. Such a malady has been judicially reprobated and efforts have been made to curtail the delay which has developed as a systemic canker.

For the first time the Code of Criminal Procedure provided periods for completing investigation in regard to offences punishable with sentences upto imprisonment not exceeding three years. Provisions have been incorporated in Chapter 36 of the Code imposing a legal bar on the court to take cognizance of such offences after the lapse of the period of limitation fixed in respect of different categories of offences the punishment of which does not exceed the aforesaid limit. However, the offences relating to corruption were among those excluded from the purview of such periods of limitation.

In Hussainara Khatoon and ors. vs. Home Secretary, State of Bihar {1980 (1) SCC 81} the entire focus made by the three-Judge Bench was on the trial stage. An advocate of this Court filed a habeas corpus petition on the basis of newspaper reports that several under-trial prisoners, including women and children, were languishing in Bihar jails for several years awaiting trial. Hence the consideration in that case was confined to the delay involved in trials.

It was in State of Andhra Pradesh vs. PV Pavithran [1990(2) SCC 340] that delay in completing investigation was recognised as a ground for quashing criminal proceedings. The following observation was made by the learned Judges in the said decision:

There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceedings to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a

criminal proceedings staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation.

Nonetheless, learned Judges hastened to add that it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed.

The matter gained further attention when a Constitution Bench of this Court has made a glimpse of the delay involved in criminal proceedings at all stages (A.R. Antulay vs. R.S. Nayak - 1992 (1) SCC 225). Though the background for the reference made in that case to the Constitution Bench pertained to the delay in the trial stages, the Bench has made clear references to the delay in the investigation stage also. In paragraph 81 the learned Judges have observed thus:

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 declared so. Social 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.

While laying down the propositions the Constitution Bench encompassed investigation as part of the amplitude for registering speedy trial. At the same time the bench struck a note of caution that a realistic and practical approach should be made regard being had to all attending circumstances, including the nature of the offences, the number of accused and witnesses etc. Each case, therefore, must be considered on its own facts, without being pedantically persuaded merely because delay had occasioned during investigation stage.

Though learned Senior Counsel made reference to the decision of this Court in Rajdeo Sharma vs. State of Bihar, [1998 (7) SCC 507, as well as in 1999 (7) SCC 604] wherein the earlier directions were slightly modified, those directions need be applied during the post charge period. The trial was explained in the said decision as covering the period commencing from recording the plea of the accused.

With the above legal position in mind we have to analysis this case to find out whether the delay involved in the investigation have impaired the fundamental rights of the appellants which is enshrined in Article 21 of the Constitution. Viewing the investigation in this case from a realistic angle it has spread over to a period of four years i.e. from June 1986 to July 1990. The Assistant Commissioner of Police attached to the ACB who has sworn to an affidavit before the High Court in answer to the averments contained in the Writ Petition, has stated that the case involves voluminous records as well as a large number of properties which are situated at various places and that hundreds of documents regarding shares, debentures, fixed deposits and receipts pertaining to hundreds of companies were also to be scrutinized. According to him such a heavy work turned out to be a time consuming job. It is not disputed that the documents sought to be produced by the prosecution run into fourteen large volumes. Officials of the ACB had to take a lot of time to conduct the investigation relating to every item of assets which was suspected to be belonging to the appellant public servant.

If this was a case which needed no sanction from the government for submitting the charge-sheet before the court, the investigating agency could have filed the charge-sheet at the end of four years from the lodgment of FIR. In this context, it is apposite to refer to the legislative fixation of periods for taking cognizance of different offences. An offence punishable with imprisonment for a term not exceeding three years has to be taken cognizance of by the court concerned within three years of the date of registration of the FIR. Of course, this is subject to certain other exceptions. As pointed out earlier, the legislature has not chosen to fix any period to take cognizance of the offence if the punishment prescribed thereto exceeds imprisonment for three years. The offence alleged against the appellant is punishable with imprisonment up to seven years. These aspects were highlighted by us for the purpose of satisfying ourselves that criminal proceedings pending against the appellants cannot be quashed on the mere ground that the investigation consumed a period of four years.

The delay taken for obtaining sanction from the Government cannot be attributed to the investigating officers. As pointed out earlier, sanction was applied for on 6.4.1991 and the Government accorded sanction on 21.2.1993. Though we are unable to approve the said time of two years for the Government to decide the question of giving sanction, considering the number of desks over which the matter had to pass, and the voluminous records to be studied at all levels, we hesitate to hold that the said interval was so unreasonably long as to affect the fundamental right of the appellants. The charge-sheet was laid within a few days of obtaining the sanction.

For the aforesaid reasons we are not inclined to quash the criminal prosecution merely on the ground of delay@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ highlighted by the appellants.

Nonetheless, we are told that the only offence alleged against the two senescent lady appellants is that they@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ

abetted the public servant to commit the offence under Section 13(2) of the P.C. Act. For two reasons we are disposed to quash the criminal proceedings as against those two ladies. First is, the materials are too insufficient to prove that those two old ladies intentionally abetted the public servant in acquiring assets which are disproportionate to his known source of income. If that is the position, why should those two old ladies be compelled to embark upon a trial which, in all probabilities, cannot end in conviction against them, even assuming that the octogenarian ladies would be able to survive till the end of the trial. Second is, the trial is not likely to end within one or two years. Even if the Special Court would strictly adhere to the directions issued by this Court in Rajdeo Sharmas case (supra) we reasonably foresee that the prosecution would be able to complete the evidence only within the farthest time permitted in Rajdeo Sharma as we can have a glimpse of the volume of documents and of the evidence to be adduced by the prosecution. We feel that it would be unfair and unreasonable to compel the two ladies, who by the advancement of old age would possibly have already crossed into geriatric stage, to stand the long trial having no reasonable prospect of ultimate conviction against them. We are, therefore, inclined to delink them from the array of accused and quash the criminal prosecution so far as those two ladies are concerned. We do so.

Thus, the appeals filed by the two lady appellants - Seeta Hemchandra Shashittal and Shanta Subarao Shirali - would stand allowed but the appeals filed by the appellant-public servant Niranjan Hemchandra Shashittal and his wife Anuradha Niranjan Shashittal, would stand dismissed.