R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL PETITION NO.8236/2019

BETWEEN :

Sri K.Lenin
@ Nithya Dharmananda
Aged about 44 years
S/o late Sri L.Karupannan
R/o Old No.94, Odaikadu
Veppampoondi Village
Gengavalli Tk, Salem Dt,
Tamil Nadu-636 101.

... Petitioner

(By Sri Ashwin Vaish, Advocate)

AND :

1. State of Karnataka
   by Superintendent of Police
   Special Enquiries, CID,
   Carlton House,
   No.1, Palace Road
   Bengaluru-560 001

2. Swamy Nithyananda
   @ Rajashekaran
   Nithyananda Dhyanapeeta
   Kallugopahalli Village
   Bidadi Hobli, Ramanagar District
   Karnataka-562 109.

3. Shiva Vallabhaneni @ Nithya Sachidananda
   Nithyananda Dhyanapeeta
   Kallugopahalli Village
   Bidadi Hobli, Ramanagar District
   Karnataka-562 109.

4. Dhanashekaran @ Nithya Sadananda
   Nithyananda Dhyanapeeta
   Kallugopahalli Village
   Bidadi Hobli, Ramanagar District
   Karnataka-562 109.

5. Ragini @ Ma Nithya Sachidananda
   Nithyananda Dhyanapeeta
   Kallugopahalli Village
   Bidadi Hobli, Ramanagar District
   Karnataka-562 109.

6. Jamuna Rani @ Ma Nithya Sadananda
   Nithyananda Dhyanapeeta
   Kallugopahalli Village
   Bidadi Hobli, Ramanagar District
   Karnataka-562 109.

… Respondents

(By Sri V.S.Hegde, SPP-II for R1;
Sri Ravi B. Naik, Senior Counsel for R3 & R5;
Sri C.V.Nagesh, Senior Counsel for
Sri Raghavendra K., Advocate for R4;
Sri A.S.Ponnanna, Senior Counsel for
Sri/Smt. Leela Devadiga, Advocate for R6)

This Criminal Petition is filed under Sections 482 r/w 407 of Cr.P.C praying to direct the trial proceedings to be continued thereafter by recording further evidence/examination in chief in continuation of evidence recorded on 08.08.2018 and 16.08.2018 in

S.C.No.86/2014 pending before the Court of III Additional District and Sessions Court, Ramanagara, produced as Annexure-D after transfer of the trial proceedings to the Sessions Court in Bengaluru.

This Criminal Petition having been heard and reserved on 31.01.2020 coming on for pronouncement of orders this day, the Court made the following:-

O R D E R

This petition is filed under Section 407 of Cr.P.C. to call for the records and to set aside the evidence recorded on 18.9.2019 as per Annexure-G; to direct the trial Court to continue recording of further evidence in continuation of the evidence recorded on 8.8.2018 and 16.8.2018, so also to transfer the trial proceedings in SC.No 86/2014, pending on the file of III Additional District and Sessions Court, Ramanagara.

2. I have heard the Sri Ashwin Vaish, learned counsel for the petitioner-complainant; Sri V.S.Hegde, learned SPP-II for respondent No.1-State; Sri Ravi B.Naik, learned Senior Counsel for respondent Nos.3

and 5; Sri C.V.Nagesh, learned Senior Counsel for respondent No.4; and Sri A.S.Ponnanna, learned Senior Counsel for respondent No.6.

3. Brief facts of the case are that petitioner filed a complaint on 18.3.2010 alleging that accused is having illicit relationship within India and abroad. He has also intimidated with the petitioner and other persons, etc. On the basis of the said complaint, after investigation, the charge sheet has been filed.

4. It is the contention of the learned counsel for the petitioner-complainant that *de novo* evidence recorded on 18.9.2019 is unsustainable in the eyes of law. The trial Court recorded the evidence which is not sustainable in law and it has acted beyond its power to record fresh evidence of the petitioner-complainant. It is his further submission that the trial Court ignoring the evidence of the petitioner recorded on 8.8.2018 and 16.8.2018 has further recorded the evidence of the petitioner-

complainant on 18.9.2019, which creates apprehension in the mind of the complainant about the bias on the part of the learned Sessions Judge. It is his further submission that petitioner apprehends that he may not receive a fair trial at the hands of the learned District and Sessions Judge. It is his further submission that the learned Sessions Judge in order to secure the presence of the complainant, has issued NBW and has passed the remarks to produce the medical certificate for his absence on 24.9.2019. Though the petitioner was suffering from health issues and was unable to take up a travel, such a drastic step has been taken as against the petitioner by the learned Sessions Judge. It is his further submission that bailable warrant has been issued against the petitioner to compel his attendance. It is his further submission that a lenient view has also been taken in respect of the accused No.1 though he was not present and the evidence has been recorded. No proper steps have been taken to keep accused No.1 present before

the trial Court. It is his further submission that though there is a direction issued by the Hon'ble Apex Court as well as this Court to expedite the trial, the learned Sessions Judge without looking into the said aspect has not completed the trial, which creates an apprehension in the mind of the complainant. On these grounds, he prayed to allow the petition.

5. It is the submission of Sri C.V.Nagesh, learned Senior Counsel appearing on behalf of respondent No.4 that the grounds urged by the petitioner-complainant are unsustainable in law. The evidence recorded on 18.9.2019 cannot be set at not. It is his further submission that at the beginning, the evidence was recorded with the help of the translator and subsequently it came to the notice of the Court that translator who has been appointed is a witness in the said case and in that context an application came to be filed by the accused for cancellation of appointment of the translator. The trial Court after considering the factual matrix, rejected the

said application. Being aggrieved by the said order, the accused approached this Court by filing Criminal Petition No.6243/2018 and this Court after considering the case allowed the said petition by the order dated 16.1.2019. Being aggrieved by the same, SLP was filed before the Hon'ble Apex Court by the complainant, which also came to be dismissed. It is his further submission that in order to get a fair trial and to avoid casualty of justice, such an application came to be filed and in that light the earlier evidence recorded by the trial Court was set aside. In the said order, after setting aside the order of the trial Court, the learned Sessions Judge was directed to consider the matter afresh after making an enquiry with CW.1 with regard to languages known to him and his proficiency in the said languages. The learned District and Sessions Judge was also directed to proceed further by appointing a translator if necessary, as far as possible an officer of the Court or a neutral person who is totally unconnected with the case. In that light, the evidence

recorded earlier on 8.8.2018 and 16.8.2018 with the help of the translator has been nullified as it was not having any value. In that light, after considering the said aspect, the trial Court subsequently recorded the evidence on 18.9.2019. There is neither any illegality nor irregularity in recording the evidence of PW.1 subsequently and the said evidence cannot be set at not. It is his further submission that the accused has not stalled the trial. He was ever ready to proceed with the matter, however because of interference and the applications filed by the complainant only, the said proceedings are being dragged on. It is his further submission that accused has fairly submitted that identity of the accused is not in dispute, even then the complainant has not stepped into the witness box and not deposed and proceeded with the matter. It is his further submission that even though witness CW.1, was present, he has refused to enter into witness box. The entire material shows inaction on the part of the prosecution or the prosecution witnesses.

Under such circumstances, the apprehension of the complainant that he will not get a fair trial is patently false. It is his further submission that for transfer of a criminal case mere apprehension on the part of the applicant is not necessary, but there must be a reasonable apprehension. In order to substantiate the said contention, he relied upon a decision in the case of ***Captain Amarinder Singh Vs. Parkash Singh Badal & others***, reported in ***(2009)6 SCC 260***. He brought to the notice of this Court as to under what circumstances the power under Sections 406 and 407 of Cr.P.C. has to be exercised by the Court. If the said touchstone is stated or justified, then under such circumstances, the Court can exercise such power and transfer the case. In this regard, he relied upon the decision in the case ***Nahar Singh Yadav & Another Vs. Union of India & Others*** reported in ***(2011)1 SCC 307***. It is his further submission that taking into consideration the conduct and absence of the witness, the Court has issued NBW to

secure his presence without there being any *mala fide* intention. At the most, the applicant ought to have applied for recalling the issuance of NBW and given the evidence. Instead of doing so, he dragged on the proceedings on one or the other pretext and hence at the instance of the complainant the case was being dragged on. Therefore, the delay in recording of evidence is only at the instance of the complainant and not by virtue of the conduct of the accused. The order sheet and other material show the active participation of the accused in the trial. On these grounds, he prayed to dismiss the petition.

6. Sri Ravi B.Naik, learned Senior Counsel appearing for respondent Nos.3 and 5 has vehemently argued and submitted that in pursuance of Section 407(3) of Cr.P.C. every application must be made through Advocate General of the State and it must be supported by an affidavit to that effect. In the instant case, no such application has been filed. By supporting

the arguments of Sri C.V.Nagesh, learned Senior Counsel, he also prays to dismiss the petition.

7. It is the submission of Sri. A.S.Ponnanna, learned Senior Counsel appearing for respondent No.6 that case has been dragged at the instance of the complainant and in pursuance of the provisions of Section 407(7) of Cr.P.C. while dismissing the application it may be held that it is frivolous or vexatious litigation and reasonable compensation may be awarded to the accused. By supporting the arguments of Senior Counsel, he also prays to dismiss the petition.

8. I have carefully and cautiously gone through the submissions made on both sides and perused the records.

9. It is the first contention of the learned counsel for the petitioner-complainant that the evidence recorded on 18.9.2019 be set aside since already the evidence of the complainant-PW.1 has been recorded on 8.8.2018

and 16.8.2018. It is his further contention that subsequent recording of evidence by ignoring the evidence which has already been recorded by the Court is going to prejudice and create bias in the mind of the complainant. On the other hand, learned Senior Counsel for the accused disputed all the allegations/apprehension raised by the petitioner in conducting the trial. It is his further contention that earlier a translator was appointed at the request of the complainant and subsequently it was noticed that the said translator was a witness in the charge sheet material and in that light an application came to be filed for the purpose of cancellation of his appointment as it is going to prejudice the accused. It is further contended that on the basis of the memo filed by the prosecution without mentioning the name of the translator, he has been appointed. In that light, it is his submission that the evidence recorded earlier with the help of the translator who was a witness in the same case is going to prejudice. In that light, an application

was filed and the said application came to be dismissed by the learned District and Sessions Judge. Against the said order, accused preferred Criminal Petition No.6243/2018 before this Court. This Court by the order dated 16.1.2019 allowed the petition and set aside the order dated 16.7.2018 with a direction to the learned Sessions Judge for fresh consideration in accordance with law after making an enquiry with CW.1-complainant with regard to languages known to him and his proficiency in the said languages. It is further observed that based on the satisfaction of the learned Sessions Judge that if the translator is necessary, he may order appointing a translator, as far as possible an officer of the Court or a neutral person who is totally unconnected with the case.

10. On going through the records and the submissions, it indicates that on 16.7.2018, Public Prosecutor filed a memo to appoint Sri Basavaraju as a translator, wherein the name of the translator was not mentioned and on the basis of the assertion by the

prosecution, the translator has been appointed. Subsequently after coming to know the said fact, an application came to be filed and in that light the Court has set aside the order appointing Sri Basavaraju as the translator. When his appointment itself is not in accordance with law as he is a witness in the charge sheet material to support the case of the prosecution, then under such circumstances, the evidence recorded on 8.8.2018 and 16.8.2018 with the help of such translator is going to prejudice the case of the accused. Hence, the translator cannot be considered to be legally appointed translator and such evidence is not the legal evidence. After taking into consideration of the order passed by this Court in Criminal Petition No.6243/2018, disposed of on 16.1.2019, if subsequently the evidence has been recorded by the Court afresh on 18.9.2019, the said evidence cannot be held to be going to create a bias to the case of the complainant. Even the complainant has also contested the said application before the District

Court as well as before this Court. The order passed by this Court has also reached finality. In that light, the said contention raised by the petitioner-complainant is not acceptable.

11. For transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that he will not get justice. It is one of the principles of administration of justice that justice should not only be done, it is seen to be done. Mere allegation that there is an apprehension that justice will not be done in a given case, does not suffice. The Court has to see all the records and ascertain as to whether the apprehension alleged is reasonable or not. This aspect came up before the Hon'ble Apex Court in the case of ***Captain Amarinder Singh Vs. Parkash Singh Badal & others*** (cited *supra*), wherein at paragraphs-18 and 51, it has been observed as under:-

*"**18**. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.*

***51**.We have already pointed out that a mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, we are of the opinion that in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding the nature of the accusations made against them. In the case on hand, the*

apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done."

12. In the case of ***Nahar Singh Yadav & Another Vs. Union of India & Others*** (cited *supra*), the Hon'ble Apex Court has given certain guidelines to exercise the power to transfer the criminal cases. At paragraphs-29 and 30 of the said decision, it has been observed as under:-

"29. *Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 CrPC should be exercised, it is manifest from a bare reading of sub-sections (2) and (3) of the said section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional*

situations, where it becomes necessary to do so to provide credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability of holding

fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.

30. *Having considered the rival claims of both the parties on the touchstone of the aforestated broad parameters, we are of the view that the apprehension entertained by CBI that the trial of the case at Ghaziabad may not be fair, resulting in miscarriage of justice, is misplaced and cannot be accepted. From the material on record, we are unable to draw any inference of a reasonable apprehension of bias nor do we think that an apprehension based on a bald allegation that since the trial Judge and some of the named accused had been close associates at some point of time and that some of the witnesses are judicial officers, the trial at Ghaziabad would be biased and not fair, undermining the*

confidence of the public in the system. While it is true that Judges are human beings, not automatons, but it is imperative for a judicial officer, in whatever capacity he may be functioning, that he must act with the belief that he is not to be guided by any factor other than to ensure that he shall render a free and fair decision, which according to his conscience is the right one on the basis of materials placed before him. There is no exception to this imperative. Therefore, we are not disposed to believe that either the witnesses or the Special Judge will get influenced in favour of the accused merely because some of them happen to be their former colleagues. As already stated, acceptance of such allegation, without something more substantial, seriously undermines the credibility and the independence of the entire judiciary of a State. Accordingly, we outrightly reject this ground urged in support of the prayer for transfer of the trial from Ghaziabad."

13. On going through the aforesaid paragraphs, it has been observed that an order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of the trial. There must be some substantial material to support the said contention and the said apprehension must be a reasonable apprehension. Keeping in view the said principle and on perusal of the records, I am of the considered opinion that the evidence of the petitioner-complainant recorded on 8.8.2018 and 16.8.2018 and the evidence recorded subsequently on 18.9.2019 afresh will not going to create any apprehension for the reason that the translator was not appointed in accordance with law.

14. During the course of arguments, the learned counsel for the petitioner-complainant contended that the accused is intending to drag on the proceedings on one pretest or the other. The accused is not within this country. Even he is not attending the Court and

applications are being filed for his exemption. However, it is brought to the notice of this Court that a petition under Section 439(2) of Cr.P.C. came to be filed in Criminal Petition No.594/2020 before co-ordinate Bench praying to cancel the bail granted to accused No.1-respondent No.2 herein. This Court by the order dated 5.2.2020 allowed the said petition and cancelled the bail granted to accused No.1-respondent No.2 herein on 11.6.2010. When the legal steps have been taken for non-appearance of the accused before the Court, then under such circumstances, it cannot be held that it is accused No.1 who is causing delay in the trial of the case.

15. It is contended by the learned counsel for the petitioner-complainant that in order to secure the presence of the complainant, bailabe warrant has been issued whereas soft corner is shown to the accused. But on perusal of the records and order sheet, it would indicate that after recording part of the evidence of the

complainant, the complainant did not appear before the trial Court for recording his further evidence. Even he did not attend the Court on summons. Under such circumstances, the trial Court has issued bailable warrant so as to expedite the trial in pursuance of the directions issued by the Hon'ble Apex Court and this Court. When the witness did not appear before the Court, if any such steps are taken to secure his presence, it cannot be said that it will create a bias to the complainant. The records indicate that the evidence of the complainant was recorded on 8.8.2018 and thereafter only on 16.8.2018, which shows that mandate of law as contemplated under Sections 231 and 309 of Cr.P.C. was not followed.

16. The Hon'ble Apex Court in the case of ***Akil @ Javed Vs. State (NCT of Delhi)*** reported in ***(2013) 7 SCC 125*** has observed that the trial Court while dealing with a Sessions Case must ensure that there is well settled procedure laid down under Code of Criminal Procedure as regards the manner in which the trial

should be conducted or to be strictly complied with in order to ensure dispensation of justice without providing any scope for unscrupulous elements to meddle with the course of justice to achieve some unlawful advantage. At paragraphs-33 to 44 of the aforesaid decision, it has been observed by the Hon'ble Apex Court as under:-

> ***"33.*** *We have referred to the above legal position relating to the extent of reliance that can be placed upon a hostile witness who was not declared hostile and in the same breath, the dire need for the courts dealing with cases involving such a serious offence to proceed with the trial commenced on day-to-day basis in de die in diem until the trial is concluded. We wish to issue a note of caution to the trial court dealing with sessions cases to ensure that there are well-settled procedures laid down under the Code of Criminal Procedure as regards the manner in which the trial should be conducted in sessions cases in order to ensure dispensation of justice without providing any scope for unscrupulous elements to meddle with the course of justice to achieve some unlawful*

advantage. In this respect, it is relevant to refer to the provisions contained in Chapter XVIII of the Criminal Procedure Code where under Section 231 it has been specifically provided that on the date fixed for examination of witnesses as provided under Section 230, the Sessions Judge should proceed to take all such evidence as may be produced in support of the prosecution and that in his discretion may permit cross-examination of any witnesses to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

34. *Under Section 309 CrPC falling under Chapter XXIV it has been specifically stipulated as under:*

*"**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 reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under Sections 376 to 376-D of the Penal Code, 1860, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.

(2) If the court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, 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 reasons 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:

Explanation 1.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.— The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

35. *In this context it will also be worthwhile to refer to a circular issued by the High Court of Delhi in Circular No. 1/87 dated 12-1-1987. Clause 24-A of the said circular reads as under:*

*"**24-A**. A disturbing trend of trial of sessions cases being adjourned, in some cases to suit convenience of counsel and in some others because the prosecution is not fully ready, has come to the notice of the High Court. Such adjournments delay disposal of sessions cases.*

The High Court considers it necessary to draw the attention of all the Sessions Judges and Assistant Sessions Judges once again to the following provisions of the Code of Criminal Procedure, 1973, Criminal Rules of Practice, Kerala, 1982 and Circulars and instructions on the list system issued earlier, in order to ensure the speedy disposal of sessions cases.

1. (a) *In every enquiry 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 reasons to be recorded. [Section 309(1) CrPC]*

(b) *After the commencement of the trial, if the court finds it necessary or advisable to postpone the commencement of, 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. If witnesses are in*

attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded, in writing. [Section 309(2) CrPC]

2. *Whenever more than three months have elapsed between the date of apprehension of the accused and the close of the trial in the Court of Session, an explanation of the cause of delay, (in whatever court it may have occurred) shall be furnished, while transmitting the copy of the judgment. (Rule 147, Criminal Rules of Practice)*

3. *Sessions cases should be disposed of within six weeks of their institution, the date of commitment being taken as the date of institution in sessions cases. Cases pending for longer periods should be regarded as old cases in respect of which explanations should be furnished in the calendar statements and in the periodical returns. (High Court Circular No. 25/61 dated 26-10-1961)*

4. *Sessions cases should be given precedence over all other work and no other work should be taken up on sessions days until the sessions work for the day is completed. A sessions case once posted should not be postponed unless that*

is unavoidable, and once the trial has begun, it should proceed continuously from day to day till it is completed. If for any reason, a case has to be adjourned or postponed, intimation should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date.

On receipt of the order of commitment the case should be posted for trial to as early a date as possible, sufficient time, say three weeks, being allowed for securing the witnesses. Ordinarily it should be possible to post two sessions cases a week, the first on Monday and the second on Thursday but sufficient time should be allowed for each case so that one case does not telescope into the next. Every endeavour should be made to avoid telescoping and for this, if necessary, the court should commence sitting earlier and continue sitting later than the normal hours. Judgment in the case begun on Monday should ordinarily be pronounced in the course of the week and that begun on Thursday the following Monday. (Instructions on the list system contained in the OM dated 8-3-1984)

All the Sessions Judges and the Assistant Sessions Judges are directed to adhere strictly to the above provisions and instructions while granting adjournments in sessions cases."

36. *In this context some of the decisions which have specifically dealt with such a situation which has caused serious inroad into the criminal jurisprudence can also be referred to. In one of the earliest cases in Badri Prasad v. Emperor [(1912) 13 Cri LJ 861 (All)] , a Division Bench of the Allahabad High Court has stated the legal position as under: (Cri LJ p. 862)*

"… Moreover, we wish to point out that it is most inexpedient for a sessions trial to be adjourned. The intention of the Code is that a trial before a Court of Session should proceed and be dealt with continuously from its inception to its finish. Occasions may arise when it is necessary to grant adjournments, but such adjournments should be granted only on the strongest possible ground and for the shortest possible period."

(emphasis added)

37. *In the decision in Chandra Sain Jain v. State [1982 Cri LJ (NOC) 86 (All)] a*

Single Judge has held as under while interpreting Section 309 CrPC: (Cri LJ p. 34)

"Merely because the prosecution is being done by CBI or by any other prosecuting agency, it is not right to grant adjournment on their mere asking and the court has to justify every adjournment if allowed, for, the right to speedy trial is part of fundamental rights envisaged under Article 21 of the Constitution, Hussainara Khatoon (3) v. State of Bihar[(1980) 1 SCC 93 : 1980 SCC (Cri) 35 : 1979 Cri LJ 1036] , Foll."

(emphasis added)

38. *In the decision in State v. Bilal Rai [1985 Cri LJ (NOC) 38 (Del)] it has been held as under: (Cri LJ p. 19)*

"When witnesses of a party are present, the court should make every possible endeavour to record their evidence and they should not be called back again. The work fixation of the Court should be so arranged as not to direct the presence of witnesses whose evidence cannot be recorded. Similarly, cross-examination of the witnesses should be completed immediately after the examination-in-chief and if need be within a short time thereafter. No long adjournment

should be allowed. Once the examination of witnesses has begun the same should be continued from day to day."

(emphasis added)

39. *In the decision in Lt. Col. S.J. Chaudhary v. State (Delhi Admn.) [(1984) 1 SCC 722 : 1984 SCC (Cri) 163] this Court in paras 2 and 3 has held as under: (SCC pp. 723-24)*

"2. We think it is an entirely wholesome practice for the trial to go on from day to day. It is most expedient that the trial before the Court of Session should proceed and be dealt with continuously from its inception to its finish. Not only will it result in expedition, it will also result in the elimination of manoeuvre and mischief. It will be in the interest of boththe prosecution and the defence that the trial proceeds from day to day. It is necessary to realise that sessions cases must not be tried piecemeal. Before commencing a trial, a Sessions Judge must satisfy himself that all necessary evidence is available. If it is not, he may postpone the case, but only on the strongest possible ground and for the shortest possible period. Once the trial commences, he should, except for a very pressing reason which

makes an adjournment inevitable, proceed de die in diem until the trial is concluded.

3. We are unable to appreciate the difficulty said to be experienced by the petitioner. It is stated that his advocate is finding it difficult to attend the court from day to day. It is the duty of every advocate, who accepts the brief in a criminal case to attend the trial from day to day. We cannot over-stress the duty of the advocate to attend to the trial from day to day. Having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. The criminal miscellaneous petition is, therefore, dismissed."

(emphasis added)

40. *In a recent decision of the Delhi High Court in State v. Ravi Kant Sharma [(2005) 120 DLT 213] , a Single Judge of the High Court has held as under in para 2: (DLT p. 214)*

"2. … True the court has discretion to defer the cross-examination. But as a matter of rule, the court cannot order in express terms that the examination-in-chief of the witnesses is recorded in a particular month and his cross-examination would follow in a particular subsequent

month. Even otherwise it is the demand of the criminal jurisprudence that criminal trial must proceed day to day. The fixing of dates only for examination-in-chief of the lengthy witnesses and fixing another date i.e. 3 months later for the purposes of cross-examination is certainly against the criminal administration of justice. Examination-in-chief if commenced on a particular date, the trial Judge has to ensure that his cross-examination must conclude either on the same date or the next day if cross-examination is lengthy or can continue on the consecutive dates. But postponing the cross-examination to a longer period of 3 months is certainly bound to create legal complications as witnesses whose examination-in-chief recorded earlier may insist on refreshing their memory and therefore such an occasion should not be allowed to arise particularly when it is the demand of the criminal law that trial once commence must take place on day-to-day basis. For these reasons, the order passed by the learned Additional Sessions Judge to that extent will not hold good in the eye of law and therefore the same is liable to be set aside. Set aside as

such. The learned Additional Sessions Judge should refix the schedule of dates of examination of prosecution witnesses and shall ensure that examination-in-chief once commences cross-examination is completed without any interruption."

(emphasis added)

41. *In a comprehensive decision of this Court in State of U.P. v. Shambhu Nath Singh[State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667 : 2001 SCC (Cri) 798] the legal position on this aspect has been dealt with in extenso. Useful reference can be made to paras 10-14 and 18: (SCC pp. 672-74)*

"10. Section 309 of the Code of Criminal Procedure (for short 'the Code') is the only provision which confers power on the trial court for granting adjournments in criminal proceedings. The conditions laid down by the legislature for granting such adjournments have been clearly incorporated in the section. It reads thus:

11. The first sub-section [of Section 309 CrPC] mandates on the trial courts that the proceedings shall be held expeditiously but the

words 'as expeditiously as possible' have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words 'as expeditiously as possible' has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination 'shall be continued from day to day until all the witnesses in attendance have been examined'. The solitary exception to the said stringent rule is, if the court finds that adjournment 'beyond the following day to be necessary' the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. In such

situation the court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition,

'[p]rovided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing'.

12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are 'special reasons', which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a 'special reason' for bypassing the mandate of Section 309 of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the

court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

18. It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for their tardiness in coping with such directions."

(emphasis supplied)

42. *Keeping the various principles, set out in the above decisions, in mind when we examine the situation that had occurred in the case on hand where PW 20 was examined-in-chief on 18-9-2000 and was cross-examined after two months i.e. on 18-11-2000 solely at the instance of the appellant's counsel on the simple ground that the counsel was engaged in some other matter in the High Court on the day when PW 20 was examined-in-chief, the adjournment granted by the trial court at the relevant point of time only discloses that the court was oblivious of the specific stipulation contained in Section 309 CrPC which mandates the requirement of sessions trial to be carried on a day-to-day basis. The trial court has not given any reason much less stated any special circumstance in order to grant such a long adjournment of two months for the cross-examination of PW 20. Every one of the cautions indicated in the decision of this Court in Raj Deo Sharma v.State of Bihar [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692 : 1998 Cri LJ 4596] was flouted with impunity. In the said decision a request was made to all the High Courts to remind all the trial Judges of the need to comply*

with Section 309 of the Code in letter and spirit. In fact, the High Courts were directed to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as per the law.

43. *It is unfortunate that in spite of the specific directions issued by this Court and reminded once again in Shambhu Nath [State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667 : 2001 SCC (Cri) 798] such recalcitrant approach was being made by the trial court unmindful of the adverse serious consequences flowing therefrom affecting the society at large. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial Judge, as confirmed by the impugned judgment [Abdul Murasalin v. State, (2005) 84 DRJ 430 : ILR (2005) 2 Del 507] of the High Court, we direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision in Raj Deo Sharma [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692 : 1998 Cri LJ 4596] and*

reiterated in Shambhu Nath [State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667 : 2001 SCC (Cri) 798] by issuing appropriate circular, if already not issued. If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial courts without providing scope for any deviation in following the procedure prescribed in the matter of a trial of sessions cases as well as other cases as provided under Section 309 CrPC. In this respect, the High Courts will also be well advised to use their machinery in the respective State Judicial Academy to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decision inRaj Deo Sharma [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692 : 1998 Cri LJ 4596] which has been extensively quoted and reiterated in the subsequent decision of this Court in Shambhu Nath[State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667 : 2001 SCC (Cri) 798] and comply with the directions at least in the future years.

> ***44.*** *In the result, while we uphold the conviction and sentence imposed on the appellant, we issue directions in the light of the provisions contained in Section 231 read along with Section 309 CrPC for the trial court to strictly adhere to the procedure prescribed therein in order to ensure speedy trial of cases and also rule out the possibility of any manoeuvring taking place by granting undue long adjournment for mere asking. The appeal stands dismissed.*

17. On going through the aforesaid decision of the Hon'ble Apex Court, it indicates that the trial Court must strictly adhere to the procedure prescribed in Section 231 of Cr.P.C. read along with Section 309 of Cr.P.C. in order to ensure speedy trial of a case and rule out the possibility of any manoeuvring taking place by granting undue long adjournments for the mere asking. Keeping in view the above said proposition of law and on perusal of records, it indicates that either at the instance of the prosecution or some times at the instance of the accused, the case has been adjourned for a decade and

no progress has been made. The Court has to balance the rights of the accused as well as the complainant by giving equal opportunities to both the parties. Slow going of a case is considered to be an evil to the society. The laws are meant for securing the justice in the society and if the Courts are not going to protect the rule of law and its enforcement, then there will be an anarchy and violence. It is the duty of the Court to enforce the law. The rule of law has to prevail and Court has to see that nobody violates the law. The trial Court as well as the parties appearing in the case have not adhered to the said proposition of law so as to make a progress and to ascertain the truth in the case. When the accused has specifically contended that his identity is not disputed and when the law provides in the absence of the accused to proceed with the case, then under such circumstances, the trial Court ought not to have adjourned the case. Though many a times the complainant has sought for adjournment on the ground of health problem, the

records indicate that even though he was present before the Court, he has not stepped into the witness box to give evidence. The said attitude of the complainant is deprecated. If he really wants to do justice, then under such circumstances, he must come forward and give the evidence as contemplated under the law. Without doing the same, he has acted on his own way that he is leading the Court instead of Court controlling the case and proceeding with the matter. In that light, the trial Court shall proceed with the case by keeping in view the ratio of laid down in the case of ***Akil @ Javed Vs. State (NCT of Delhi)*** (cited *supra*). If the accused does not co-operate, the trial Court shall keep in mind certain guidelines which are issued in the aforesaid decision, so also with reference to the witnesses and expedite the trial.

18. On perusal of the records and the contentions raised by the petitioner-complainant, there is no reasonable apprehension on the part of the complainant

to get transfer the case to some other Court. In order to expedite the trial, if some steps are taken, then under such circumstances, it cannot be considered to be an illegal act which will bias the petitioner. Already a decade has been spent and if on this silly reason if the contention is taken up without there being any material, it is going to delay the proceedings. Even the records indicate that only with an intention to harass, such steps have been taken by both the parties.

In view of the aforesaid facts and circumstances of the case, petition being devoid of merits, is liable to be dismissed and accordingly the same stands ***dismissed***.

The trial Court is directed to expedite the trial.

Registry is directed to send back the trial Court records forthwith.

Sd/-
JUDGE

*ck/-