

EFFECTIVE AND SPEEDY DISPOSAL OF ECONOMIC OFFENCES CASES

Lecture delivered Hon'ble Thiru Justice K. N. BASHA, Judge, High Court Madras at Tamil Nadu State Judicial Academy during the Refresher Course for District Judges on 31.10.2009

I. Introduction :

Speedy trial and timely justice are integral parts of right to life guaranteed under Article 21 of the Constitution of India. That is why, the popular saying goes "Justice delayed is justice denied".

2. The topic that is more often discussed at various levels in seminars, workshops and meetings is the delay and backlog of cases in courts. The outcome of such seminars, workshops and meetings have actually changed the scenario which we have witnessed in the recent past. However, it cannot be stated that delay has been completely eradicated in the Courts.

3. There are several factors which contribute to the delay in courts. Let us deliberate on some of such causes for delay and try to find out the ways and means to avoid delay.

4. The Hon'ble Apex Court on several occasions has expressed its concern in respect of delay caused in Courts and has also gone to the extent of saying that speedy trial is not only the right of the accused but of the victims of the crime also.

5. The inordinate delay in conducting trial contributes to acquittal of guilty persons either because the evidence is lost or because of lapse of time or due to other factors. Whatever may be the reason, it is justice that becomes casualty.

6. The Hon'ble Apex Court in **Rang Bahadur Singh V. State of U.P.** reported in **AIR 2000 SC 1209** has held as follows :

"The time-tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits."

7. In yet another decision in **State of U.P. V. Ram Veer Singh and Another** reported

in **2007 (6) Supreme 164** the Hon'ble Apex Court has held as follows :

"The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. **A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. "**

Therefore, it is needless to say that the right to speedy trial can be regarded as reasonable, fair and just.

8. The victims of crimes knock at the doors of justice with pain and anguish in their hearts with the fond hope of getting justice. In spite of the delay, which they experience, the confidence reposed by them in the institution has not been eroded in any manner. Therefore, it is imperative for the judiciary to rise up to the occasion to ensure speedy justice by taking effective steps to avoid delay. At the same time, it should not be forgotten that the elements of judiciousness, fairness, equality and compassion cannot be allowed to be sacrificed by rash disposal of cases. We should remember that justice has to be ensured ; justice cannot be hurried to be buried. We have to "decide" the cases and not just "dispose them of".

9. The Hon'ble Apex Court in **Hussainara Khatoon (I) V. Home Secretary, State of Bihar** reported in **(1980) 1 SCC 81** has held that,

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."

10. The Hon'ble Apex Court has also observed in **Hussainara Khatoon (I)** case that,

"It is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial."

11. The Constitution Bench of the Hon'ble Apex Court in **A.R.Antulay V. R.S.Nayak** reported in **(1992) 1 SCC 225** has held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution.

12. In that decision, the Hon'ble Apex Court has also held as follows:

“.. 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 guilt or innocence of the accused is determined as quickly as possible in the circumstances.

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.”

13. We all agree that all the cases have to be disposed of expeditiously. However, in the cases relating to the economic offences, not only few individuals falls victims and suffer pecuniary loss, but such offences cause serious damage to the national economy. Therefore, there can be no two opinions that the cases relating to economic offences have to be tried expeditiously.

II. ECONOMIC OFFENCES :

14. Economic offences come under a separate category of crimes and they are often called as white and blue collar crimes. So-called highly qualified persons, business magnets, corporate persons, technical experts and public servants frequently indulge in various types of economic crimes and frauds.

15. The following categories of cases come under acts of legislation classified as economic crimes :

Sl. No.	Economic Crimes	Acts of Legislation	Enforcement Authorities
1	Tax Evasion	Income Tax Act	Central Board of Direct Taxes
2	Illicit Trafficking in contraband goods (smuggling)	Customs Act, 1962 COFEPOSA, 1974	Collectors of Customs
3	Evasion of Excise Duty	Central Excise and Salt Act, 1944	Collectors of Central Excise
4	Money Laundering	Foreign Exchange Regulations Act, 1973	Directorate of Enforcement
5	Land Grabbing/Real Estate Frauds	IPC	Police/CBI
6	Trade in Human body parts	Transplantation of Human Organs Act, 1994	Police/CBI
7	Illicit Drug Trafficking	NDPS Act, 1985 & 1988	NCB/Police/CBI
8	Corruption and Bribery of Public Servants	Prevention of Corruption Act, 1988	State/Anti Corruption Bureau/Vigilance Bureau/CBI
9	Bank Frauds	IPC	Police/CBI
10	Insurance Frauds	IPC	Police/CBI
11	Racketeering in Employment	IPC	Police/CBI
12	Illegal Foreign Trade	Import & Export (Control) Act, 1947	Directorate General of Foreign Trade/CBI

13	Racketeering in false Travel Documents	Passport Act, 1920/IPC	Police/CBI
14	Credit Cards Fraud	IPC	Police/CBI
15	Theft of Intellectual Property	Copy Right Act, 1957 (Amendments 1984 & 1994)	Police/CBI
16	Computer Crime/Software Piracy/Cyber Law	Copy Right Act, 1957/Information Technology Act, 2000	Police/CBI
17	Company Frauds (Contraband)	Companies Act, 1956/IPC MRTP, 1968	Police/CBI

16. The economic offences are also falling under the broad category of 'cheating', 'counterfeiting' and 'criminal breach of trust'.

17. Economic offenders are exploiting the weaknesses in almost all areas of activities and siphoned off thousands of crores.

TNPID Act :

18. During the year 1996, complaints were poured before the Central Crime Branch, Chennai City, against the unincorporated financial institutions as they alleged to have induced the public to deposit their hard-earned money by offering attractive interest, collected huge amounts and defaulted in payment. Initially action was taken only for the alleged offence of cheating and fraud. Thereafter, the Government of Tamil Nadu enacted the Tamil Nadu Protection of Interest of Depositors Act in the year 1997. Tamil Nadu is the first state to enact such an act in the country. Thereafter, with a view to conduct speedy trial of such cases, a Special Court for TNPID Cases was constituted at Chennai. In the year 2008, Special Courts for TNPID Cases were also constituted at Madurai and Coimbatore and the cases pending on the file of the Chennai Court pertaining to these places were transferred to these Courts and renumbered and as on date there are three Special Courts for TNPID Cases are functioning in the State. Several other States, following the Tamil Nadu Act, enacted similar acts on the lines of the Tamil Nadu Act.

19. A separate wing, viz., Economic Offences Wing was formed to investigate the cases relating to financial institutions and the said Wing started functioning from 01.01.2000 headed by Inspector General of Police, Economic Offences Wing – II.

20. The Economic Offences Wing – II had registered 1358 criminal cases against defaulting financial institutions, out of which 121 cases are under investigation and 360 cases are pending trial. Further action was dropped in 460 cases, 64 cases ended in conviction, 169 cases ended in acquittal and 74 cases were transferred to the local Police.

21.1. SALIENT FEATURES OF TNPID ACT :

- (1) Failure to return the deposit/interest – an offence also failure to render service for which deposit is made – Section 5.
- (2) 10 years Imprisonment and Rs.1 lakh fine – Section 5.
- (3) Section 5A provides for compounding the offence.
- (4) Attachment of money/property purchased out of deposits ; if not sufficient power to attach other property of the company/promoters/directors etc., Section 3.
- (5) Borrower's property liable to attachment – Section 3
- (6) Properties transferred other than for consideration/good faith liable for attachment – Section 8
- (7) NBFCs originally exempted brought within the ambit of TNPID Act, Section 2(3).
- (8) Definition of Financial Institution is widened to include companies registered under the Indian Companies registered under the companies Act, Section 2(3).
- (9) Competent Authority is empowered to attach & sell the properties and disburse the money to the depositors – Sections 3 and 4.

21.2. SALIENT FEATURES OF THE AMENDED TNPID Act, 1997 :

TNPID Act, 1997 was amended on 10.11.2003.

- (1) In Section 2(2) of the act – Deposit includes deposits of money in installments and also for any service.
- (2) Under Section 2(3) – Financial establishment : A company registered under Companies Act – 1956 (Central Act -1 of 1956) is also included ;
- (3) Under Section 3 – attachment of properties : Properties of the borrowers can also be attached.
- (4) Under Section 5A – Compounding of offences is amended “Competent Authority can compound the offences before the institution of the prosecution or after institution of the prosecution.”

21.3. COMPETENT AUTHORITY :

The Additional Commissioner of Land Administration was the only Competent Authority until September 2004. As per G.O.No.1049/2004, Home/Courts II A, dated 26.08.2004 the DROs of the districts have been notified as the Competent Authorities.

21.4. COMPETENT AUTHORITY FOR ATTACHMENT PROCEEDINGS :

Competent Authority in TNPID Cases is the custodian for the attachment proceedings, takes possession of the Ad-interim attached properties. Get absolute attachment order and distribute the amount realized equally to the depositors after the sale of Property.

21.5. Act No.18 of 2008 :

Certain amendments were brought into force in Sections 4 and 7 of the TNPID Act.

21.6. The constitutional validity of TNPID Act was upheld by Hon'ble Mr. Justice P. Sathasivam (as he then was) in a case in **Thiru Muruga Finance V. State of Tamil Nadu** reported in **2000 (II) CTC 609**. It was again challenged in view of the order passed by the Full bench of Bombay High Court declaring the "Maharashtra Protection of Interests of Depositors (in financial Establishments) Act, 1999 known as MPID (FE) Act) as ultra virus. The Full bench of Madras High Court again upheld the constitutional validity of the TNPID Act on 02.03.2007 in **Bagavathy, S. V. State of Tamil Nadu** reported in **2007 (2) CTC 207**.

21.7. The spirit behind the TNPID Act is settlement. This is self contained, because the offence under TNPID Act is compoundable. This is also indicated in the Full Bench decision of our High Court cited supra. The point is what shall be his attitude toward TNPID Act and how shall he approach the cases under it ? In this context it is necessary to know the anatomy of the business.

A person or a group of persons have a Consolidated right under Article 19(1)(g) to engage in any profession or business of his choice. Therefore, when a group of persons commences a financial business the legal way, there is nothing fundamentally wrong about it.

There are at least three categories of financial establishments that come before TNPID Court. (i) Those who actually intend to cheat. (ii) Those who messed up their business with lack of business expertise as indicated above (iii) Lastly, thoroughly innocent group whose business comes to a halt because of wrong depositors' perception. This happens where there is a run on their financial establishments because some other financial establishment has cheated.

21.8. As on date, there are 126 calendar cases are pending on the file of the Special Court, TNPID Act Cases, Madurai. There are case pending right from the year 2001 and one oldest case is pending right from the year 2000.

22. Land Grabbing Cases are increasing alarmingly day-by-day on the basis of forging and fabricating false documents in respect of the properties. In view of such menace, a separate wing was also created for investigating the land grabbing offences in the Central Crime Wing, namely, Land Grabbing Wing.

23. ECONOMIC OFFENCES DIVISION :

The Economic Offence Wing was created in CBI in the year 1964. the following kinds of cases are dealt with by this wing.

- (1) Import-export frauds ;
- (2) Banking frauds ;
- (3) Insurance frauds ;
- (4) Foreign exchange frauds ;
- (5) Smuggling of narcotics and psychotropic substances ;
- (6) Forgery of travel documents, identity papers, and overseas job rackets.
- (7) Counterfeit currency and fake Government stamps/papers ;
- (8) Cyber Crimes ;
- (9) Violations of Intellectual Property Rights, audio and video piracy, software piracy, etc.

24. Cyber Crime Investigation Cell :

A Cyber Crime Investigation Cell (CCIC) has been constituted in CBI in the year 1999.

25. INSURANCE CLAIM FRAUD CASES :

Insurance claim fraud cases were also increasing and as a result, this Court in a decision in **National Insurance Co. Ltd., Coimbatore V. K.Nandabalan** reported in **2005 (2) Law Weekly 439** felt the necessity of constituting one central agency for dealing with the bogus insurance claim cases with a view to stop such a serious menace defeating the very object of the beneficial legislation.

The First Bench of this Court in **National Insurance Company Limited V. Director General of Police & 28 others** reported in **2006-2-L.W. 176**, considering that crores of rupees of public money is involved and larger public interest is at stake in view of the false and bogus insurance claims thought it fit to entrust the investigation to the CBI and in view of the said decision and in view of the investigation was taken over by the CBI, 800 Motor Accident Claim Petitions were withdrawn before the Tribunals and the claims of compensation to the tune of Rs.100/- crores have been withdrawn.

26. Constitution of Special Court for CBI Cases :

There are three Special Courts constituted for CBI Cases at Chennai, one at Madurai and another one at Coimbatore. They are, Principal Special Judge for CBI Cases, Chennai, (ii) Additional Special Judge for CBI Cases, Chennai (IX Court), (iii) Additional Special Court

for CBI Cases, Chennai, (iv) II Additional Special Court for CBI Cases, Madurai, and (v) II Additional Special Court for CBI Cases, Coimbatore. There is also a proposal for constitution of three more CBI Special Court, two at Chennai and one at Trichy.

As on 30.09.2009, the pendency of cases before the CBI Courts as hereunder :

District	Court No.1	Court No.2	Court No.3
Chennai	66	58	140
Madurai	46	..	..
Coimbatore	48	..	..

IX Additional Special Court for CBI Cases

Statement showing the Calender Cases for the month of **July 2009**

C.C.No.	No.of witnesses Examined & Date	Total No.of pages (Letter Font Size 12)
127/1997	2 witnesses - 9.7.09	4
128/1997	1 witness - 9.7.09	2
59/2000	1 witness - 20.7.09	4
1/2003	3 witnesses - 15.7.09	10
18/2003	4 witnesses - 14.7.09, 24.7.09	9
28/2003	3 witnesses - 17.7.09	6
6/2005	2 witnesses - 7.7.09, 14.7.09	4
22/2005	1 witness - 24.7.09	6
18/2006	5 witnesses - 21.7.09	7
7/2008	1 witness - 21.7.09	2
18/2008	1 witness - 9.7.09	2

Statement showing the Calender Cases for the month of **August 2009**

C.C.No.	No.of witnesses Examined & Date	Total No.of pages (Letter Font Size 12)
23/1997	1 witness - 5.8.09	1
127/1997	1 witness - 3.8.09	10
75/2001	5 witnesses - 10.8.09, 19.8.09, 28.8.09	15
1/2003	1 witness - 11.8.09	2
18/2003	1 witness - 27.8.09	3
26/2003	2 witnesses - 26.8.09	5
28/2003	1 witness - 7.8.09	2
35/2004	2 witnesses - 31.8.09	1
3/2006	1 witness - 6.8.09	6
16/2006	5 witnesses - 19.8.09	9
18/2006	10 witnesses - 4.8.09, 5.8.09, 22.8.09	28
27/2006	3 witnesses - 11.8.09	9
9/2007	2 witnesses - 14.8.09	8
11/2007	4 witnesses - 18.8.09	8
3/2008	1 witness - 21.8.09	7
7/2008	1 witness - 11.8.09	2
20/2008	1 witness - 17.8.09	2
37/2008	1 witness - 14.8.09	2

Statement showing the Calender Cases pending for the month of **July and August 2009**

Total No. of pending cases upto August 2009	For the month of July 2009		For the month of August 2009	
	Total No. of witnesses examined	Total No. of pages	Total No. of witnesses examined	Total No. of pages
55	24	56	43	120

Statement showing the particulars of total pending cases, number of witnesses examined with date along with case particulars on the file of the **XI Additional Special Court for CBI Cases, Chennai** for the month of **July and August 2009**.

Sl. No.	C.C.No.	No.of witnesses examined	Duration of time taken & Pages	Remarks
1	22/97	P.W 77	10.08.2009 (7)	PW77 examined ; Ex.P.1005 marked
2	78/97	..	..	NBW pending against A3
3	84/97	..	..	Crl.A.Nos.899 & 900/01 disposed of by Hon'ble Supreme court for framing of charges
4	91/97	..	..	NBW pending
5	196/97	PW 17, PW 18	31.8.09 (12)(7)	PW18 examined ; Ex.P.374 marked
6	225/97	PW 8	16.6.09, 29.7.09, 27.8.09 (15)	PW 8 examined Ex.P.106 marked
7	20/98	PW 11	27.7.09 (6)	Issue summoning to remaining witnesses
8	33/98	PW30, 31	9.6.09, 19.6.09 (12) 17.7.09, 24.7.09, 10.8.09, 18.8.09 (15)	PW.31 examined Ex.P.213 marked
32	82/01	PW.16 PW 17 PW 18, 19 PW 19 PW20 PW21 PW22 PW23 PW24 PW25	15.7.09, 16.7.09 (9) 17.7.09(6) 20.7.09 (8), (11) 21.7.09, 5.8.09 to 7.8.09, 10.8.09, 11.8.09 and 14.8.09 (20) 21.8.09 (8) 23.7.09, 24.7.09, 28.7.09, 29.7.09, 30.7.09, 21.7.09, 3.8.09 4.8.09 (14) 4.8.09 (24) 19.8.09 (8) 27.8.09 (6)	As per order of the Hon'ble Supreme Court trial is conducting day to day basis P.Ws.28 examined Ex.Ps.486 marked
33	1/2002	..	..	Split up case from CC.37/99 NBW pending
34	2/2002	PWs.2,3,4	11.08.09 (16)(8)(13)	PWs.15 examined Ex.Ps.175 marked
35	7/2002	PWs.6 and 7	29.7.09 (8)	PWs.25 examined, Ex.Ps.278 marked
36	8/2002	PW 21	8.7.09, 3.8.09 (11)	P.W.21 examined, Ex.Ps.484 marked

37	11/02	PW 15 PW 16	4.6.09, 7.7.09 (13) 2.9.09 (6)	PWs.11 examined, Ex.P.274 marked
38	17/02	DW 1 DW 2	20.07.09 (8) 20.08.09(6)	PWs.37 and DWs.3 examined. Ex.Ps.298 and Ex.Ds.26 marked - for arguments

Statement regarding pending Criminal Cases of the file of
Principal Special Judge for CBI Cases/VIII Additional City
Civil Court, Chennai - 104 with district of jurisdiction

Sl. No.	Calendar Case No.	Offence u/s Act	District of Jurisdiction
1	92/97	U/s.120B r/w 420 IPC & Sec.5(2) r/w 5(1)(d) of PC Act, 1949	Chennai
2	1/98	U/s.120B r/w 420, 468 and 471 IPC & Sec.13(2) r/w 13(1)(d) of PC Act, 1988	Chennai
3	8/99	U/s.120B r/w 420 IPC & Sec.13(2) r/w 13(1)(d) of PC Act, 1988	Chennai
4	6/2000	U/s.120B r/w 420 IPC & Sec.13(2) r/w 13(1)(d) of PC Act, 1988	Chennai
5	5/2000	U/s.120B r/w 420 IPC & Sec.5(2) r/w 5(1)(d) of PC Act, 1947	Chennai
6	9/01	Sec.13(2) r/w 13(1)(d) of PC Act and 109 IPC, 13(2) r/w 13(1)(d) PC Act	A1 & A2-Chennai A3-Thanjavur
7	27/01	U/s.402, 477A IPC & Sec.13(2) r/w 13(1)(d) of PC Act, 1988	Chennai
8	5/02	- do-	NBW Pending, Chennai
9	15/02	U/s.120B IPC r/w & Sec.13(1)(d) of PC Act, 1988	Chennai
10	10/03	U/s.120B r/w 420 IPC & Sec.13(2) r/w 13(1)(d) of PC Act	Chennai

Statement showing the particulars of Year-war pendency of cases under the Prevention of Corruption Act pending as on 30.9.09 of **Principal Special Judge's Court for CBI Cases, Madurai**

Total No. of pending cases as on 30.09.2009 = 46

Year-war statement

1998	2001	2004	2005	2006	2007	2008	2009	Total
1	1	11	4	7	8	11	3	46 *

* Less than 7 years = 44 ;

7 years old cases = 2

oldest case is C.C.No.2/98, in which 138 witnesses have been examined.

Statement showing the category-wise of Prevention of Corruption Act of **Principal Special Judge for CBI Cases, Madurai**, as on 30.09.2009

Bank Fraud Cases	Disproportionate Assets Cases	Trap Cases	False Insurance Cases	False Mediclaim cases	Cremation Shed fraud cases	LIC fraud cases	Insurance fraud case	Passport fraud cases
1/2005	6/2001	1/2007	10/2004	6/2004	2/1998	7/2005	12/2008	6/2007
2/2005	1/2008	12/2007	11/2004	7/2004				9/2007**
6/2005	10/2008	8/2008	12/2004	8/2004				3/2008**
8/2007*	11/2008	9/2008	13/2004					
04/2006		2/2009	14/2004					
7/2006*			15/2004					
08/2006			16/2004					
09/2006			17/2004					
3/2006*			2/2007					
13/2006			3/2007					
16/2006			10/2007					
04/2008			1/2009					
05/2008								
06/2008								
07/2008								
03/2009								
16	4	5	12	3	1	1	1	3

* Non-Bailable Warrant pending against accused persons.

** Non-appearance of accused persons (Split up from CC No.4/2007)

24. LANDMARK DECISIONS IN RESPECT OF SPEEDY TRIAL AND THE GUIDELINES FOR SPEEDY DISPOSAL OF CASES :

The Hon'ble Apex Court in **A.R.Antulay's case (1992) 1 SCC 225** has given the guidelines for expeditious disposal of cases as hereunder :

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

1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-

less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. 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.

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

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

6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate".

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 U.S.A., 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 case.

9. Ordinarily speaking, where the court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such

a case, it is open to the court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-as may be deemed just and equitable in the circumstances of the case.

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

25. Thereafter, the Constitution Bench of the Hon'ble Apex Court in **P.Ramachandra Rao V. State of Karnataka** reported in **(2002) 4 SCC 578** has held that the directions prescribing such time-limit by 2 or 3-Judge Benches of Supreme Court in two common causes cases, viz., **Common Cause I (1996) 4 SCC 33**, **Common Cause II (1996) 6 SCC 775** and two Raj Deo Sharma cases viz., **Raj Deo Sharma I (1998) 7 SCC 507** and **Raj Deo Sharma II (1999) 7 SCC 604** run counter to the Constitution Bench decision in **A.R.Antulay's case (1992) 1 SCC 225**.

26. The Hon'ble Apex Court in **P.Ramachandra Rao** case held as hereunder :
“Thus, 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 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.”

27. It was also held in that decision that,

“Secondly, while deleting the directions made respectively by two-and three Judge Benches of the Supreme Court in the cases under reference, no departure has been made from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the Court.”

20. Several cases coming to our notice while hearing appeals, petitions

and miscellaneous petitions (such as for bail and quashing of proceedings) reveal, apart from inadequate judge strength, other factors contributing to the delay at the trial. Generally speaking, these are: (i) absence of, or delay in appointment of, public prosecutors proportionate with the number of courts/cases; (ii) absence of or belated service of summons and warrants on the accused/witnesses; (iii) non-production of undertrial prisoners in the Court; (iv) presiding Judges proceeding on leave, though the cases are fixed for trial; (v) strikes by members of Bar; and (vi) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience. 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. **All these factors demonstrate that the goal of speedy justice can be achieved by a combined and result-oriented collective thinking and action on the part of the Legislature, the Judiciary, the Executive and representative bodies of members of Bar.**

21. 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. Section 258, in Chapter XX of Cr.P.C., on Trial of Summons-cases, empowers the Magistrate trying summons cases instituted otherwise than upon complaint, for reasons to be recorded by him, to stop the proceedings at any stage without pronouncing any judgment and where such

stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, to pronounce a judgment of acquittal, and in any other case, release the accused, having effect of discharge. This provision is almost never used by the Courts. In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any Court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 of Cr.P.C. for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution.

29. (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.

28. Reasons for delay in conducting trial :

- (1) Frequent adjournments of cases on unreasonable grounds ;
- (2) Non-co-operation of accused by absents frequently and changing the counsel often with a view to protract the proceedings;
- (3) Filing of unnecessary discharge petitions before the trial Court and quashing petitions before the High Court thereby hampering the progress of the trial. At this juncture, I would like to make a mention about one case where the High Court dismissed the petition under Section 482 Cr.P.C. filed by one of the accused for quashing the entire proceeding. The said case relates to false insurance claim. After the elaborate order of dismissal passed by the High Court the accused again, on certain grounds, moved the trial Court with a petition seeking to drop the proceedings, that too after examination of 11 witnesses. The trial Court dropped the proceedings against one of the accused on the ground of non-compliance of Section 195 Cr.P.C. Against the

said order, a revision is pending on the file of the High Court. Therefore, I cannot go into the merits of the case and the findings of the learned trial Judge for dropping the proceeding against one of the accused ;

- (4) Non-production of witnesses by the prosecution ; There are cases pending for decades on the ground of non-availability of witnesses ; (cases are pending right from the year 1987 before the learned Additional Chief Metropolitan Magistrate, E.O.I, Chennai, on the ground of non-production of witnesses) ;
- (5) Absence of investigating officer for the trial on one ground or the other ;
- (6) Insufficient strength of prosecutors for conducting trial in economic offences cases. For example, Prevention of Corruption Act Cases are managed by one Public Prosecutor in more than one District which results in delay in conducting the trial ;
- (7) Examination of immaterial witnesses is yet another cause for the delay ;
- (8) Frequent boycotts by the members of the legal fraternity ;
- (9) Undue and unexplained delay caused at the investigation stage ;
- (10) Disproportionate distribution of cases to the courts.

29. Suggestions for speedy disposal :

- (1) Frequent adjournments on unreasonable grounds should be avoided and the trial Court should insist the Prosecutor as well as the defence counsel to avoid unnecessary adjournments.
- (2) The Court should ensure that the prosecution produce the material witnesses without any delay and such witnesses examined, as far as possible, on a day-to-day basis;
- (3) The Prosecutor should be impressed upon to dispense with the examination of unnecessary and immaterial witnesses except to examine some witnesses to corroborate the other witnesses who have already spoken to about the prosecution version ;
- (4) The Courts should see that the police take effective steps to serve the summons to the witnesses ;
- (5) If there is no response of from the accused to summons, the trial Court should issue non-bailable warrant and such warrants should be executed by taking effective steps without any undue delay ;
- (6) There should be equal distribution of cases to all the special Court for CBI Cases. At Chennai, there are three Courts for CBI Cases and the third Court, viz., The XI Additional Special Court for CBI Cases was constituted at the request of the CBI to try Indian Bank scam case, but the cases relating to all financial institutions transferred to XI Additional Special Court for CBI Cases resulting in huge pendency in that Court.
- (7) The trial Courts should frequently exercise its power by invoking Section 309 Cr.P.C.

for expeditious disposal of economic offences cases.

- (8) The economic offences cases shall be conducted, as far as possible, on a day-to-day basis, and certain cases have already been tried as per the directions of the Supreme Court and High Court ;
- (9) The investigation officers shall expedite the investigation as expeditiously as possible and to file the final reports at the earliest;
- (10) Mediation and Conciliation and other Alternative Dispute Redressal (ADR) should be adopted wherever it is possible.
- (11) The offence under Section TNPID Act is compoundable one and the paramount interest of the depositors has to be considered for getting back their hard earned money by taking effective steps to bring the attached properties for sale and distribution of sale proceeds. In respect of other offences also wherever the offence is compoundable including the offence of Cheating, the Court should give suggestion for compounding the offence by giving reasonable time ;
- (12) Whenever summons or warrants issued to the police for compliance, it should be ensured that there is a report from the police either regarding the service of summons or non-serving the summons.
- (13) Frequent meetings of police officials and the Judges should be conducted to take a survey of the progress of service of summons, execution of warrants and trials.

The above suggestions are only illustrative and not exhaustive.

30. Finally, I would like to conclude that whatever may be the guidelines given and the steps taken by the Court, unless and until there is an effective co-operation and coordination between the Bench, Bar and the prosecution, we cannot achieve the goal of rendering speedy justice by speedy disposal of the economic offences cases.

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