

ક્રિમી.કેસ નંબર : ૬૪૯૨૫/૨૦૧૭ના કામે આંક :૧ લગત કુકમ

કેસોના ઝડપી નિકાલ તથા પુનઃ મુલ્યાંકન સંબંધે (૧) ચીફ કોર્ટ, અમદાવાદ ના જા.નં.૪૬૪૮/૧૭ તા.૧૧-૧૦-૧૭, તથા (૨) ચીફ કોર્ટ, અમદાવાદ જા.નં.૫૦૪૯/૧૭ તા.૨૧-૧૧-૧૭ વ્યાને લીધા. નામદાર ગુજરાત હાઈકોર્ટ તરફથી અવારનવાર જુના તથા "રેડ્ડુડ" પ્રકારના કેસોનો નિકાલ કરવાની કામગીરી સંબંધે આદેશો કરવામા આવેલ છે. જે અનુસંધાને હાલના આ કેસની રેકર્ડની હકીકતો જોતા આ કામે આરોપી/આરોપીઓ ઉપર વોરંટો બજતા નથી. આરોપી/આરોપીઓ ઉપર વારંવાર આ અદાલત તરફથી પ્રોસેસ કાઢવામાં આવેલ છે, જે બજે કે વગર બજે પણ પરત આવેલ નથી. જે સંબંધે અદાલત તરફથી અવારનવાર પોલીસ એજન્સીને અન્ય કેસોમા પણ ખુલાસા પુછવામા આવેલ છે. જે સંબંધે પોલીસ એજન્સી દ્વારા પણ બજવણી થઈ શકે તેમ ન હોવાની હકીકતો જણાવેલ છે. ફરીયાદપક્ષ આરોપીઓને અદાલત સમક્ષ હાજર કરી શકેલ નથી.

નામદાર સર્વોચ્ચ અદાલતે AIR 2012 SC 3217 Hon'ble Judges:H.L.Dattu and Chandramauli Kr.Prasad JJ. Ranjan Dwivedi Versus C.B.I., Through Th4e Director General with Ac. Sudevananda Avadhuta Versus C.B.I., Through The Director General ના ચુકાદામા ઠરાવેલ છે કે ક્રિમીનલ કોર્ટોએ ઉચિત કેસોમા ક્રિ.પ્રો. કોડ ક. ૨૫૮, ૩૦૯, ૩૧૧ ના પાવર્સ ન્યાયના હીતમા વાપરવા જોઈએ, જેમા નામદાર એપેલ કોર્ટે ઠરાવેલ છે કે, The criminal courts should exercise their available powers, such as to exercise power under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

જે સંબંધે નામદાર બોમ્બે હાઈકોર્ટનો ચુકાદો Mulchand Motilal Raka v The State of Maharashtra & Anr. 1996(2) Crimes 177 (Bom) વ્યાને લેતા તેમા ઠરાવેલ છે કે, Section 258 of the Code which empowers to stop the proceedings in certain cases is intended to meet with certain situations, where the presence of accused persons cannot be secured or presence of any important witness cannot be secured by the prosecution, which is necessary for the trial of the case. Therefore, where the Magistrate does not find it possible to dispose of the matter by adopting normal procedure contemplated by the Code for one reason or other as herein above stated, in such situation it would be open to the Magistrate to stop further proceedings of the case. Section 258 of the Code can be resorted to where the special or unusual circumstances exist, such as non-appearance of the accused before the Court for considerable time or of the important witness of the prosecution, which make it difficult or impossible for the Magistrate to proceed with the case in normal way. Therefore, in such situation, where the Magistrate finds it difficult to decide the case on merit, without any hindrance, in the normal manner, as per procedure under the Code, the provisions of section 258 of Code can be resorted to.

"નામદાર સર્વોચ્ચ અદાલતનો ચુકાદો AIR 2009 SC 1822 Hon'ble Judges:D.K.Jain and R.M.Lodha JJ. Vakil Prasad Singh Versus State Of Bihar વંચાણે લેતા તેમા નામદાર સર્વોચ્ચ અદાલતે ઠરાવેલ છે કે, It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Art. 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

25 Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

જે ચુકાદાની હકીકતો જોતા પણ આ કામે આરોપીના બંધારણીય હકોનો ભંગ થતો હોવાનું જણાય છે. આ જ સંબંધે નામદાર મધ્યપ્રદેશ હાઈકોર્ટનો ચુકાદો State of M.P., Appellant v. Kalu Thawar and another, Respondents. વ્યાને લેતા તેમા ડિવિઝન બેન્ચે ઠરાવેલ છે કે Police must always remember that it has a duty to the Court and they cannot just send a challan and think that the rest will be done by the court.

તથા ઈબ્રાહીમ લાગા વિ. ગુજરાત રાજ્ય ૧૯૭૧ પેજ નં. ૧૯૪૮ ના માર્ગદર્શક સિધ્ધાંતો ધ્યાને લેતા પણ હાલના કેસમાં સ્ટોપ પ્રોસીડીંગ કરવું ઉચિત જણાય છે.

જેથી આ કામે પોલીસ એજન્સીને પુરતી તકો આપવા છતાં આરોપી/આરોપીઓને હાજર રખાવી શકેલ ન હોઈ હાલના કામે આરોપી/આરોપીઓને વિરૂધ્ધ પોલીસે ચાર્જશીટ દાખલ કરેલ છે તેમ છતાં આ કામે આરોપી/આરોપીઓને હાજર રખાવેલ નથી.

કલમ સી.આર.પી.સી. કોડની કલમ ૨૫૮ તથા કલમ ૩૦૦ જોવામાં આવે તો ભવિષ્યમાં આરોપીને ફરીયાદ પણ રજૂ કરે અથવા તો હાજર થાય ત્યારે કોડની કલમ ૩૦૦(૫) મુજબ નવેસરથી કાર્યવાહી કરવાને કોઈ બાધ રહેશે નહીં અને કેસ ફરી શરૂ કરી શકાય છે.

સદર કામે આરોપી સામે ચાર્જશીટ થયેલ છે આરોપીનું સરનામું અન્ય જીલ્લાનું હોય મળી આવેલ નથી વધુમાં ફરીયાદી પણ રાજસ્થાન રાજ્યના હોય, તેમની હાજરી ઉપલબ્ધ થઈ શકેલ નથી અન્ય કોઈ મહત્વના સાહેદ સ્થાનિક ન હોય મહત્વનો પુરાવો મળી આવે તેવી શક્યતા પણ નહીવત રહેલ છે

નામદાર સુપ્રિમ કોર્ટ એ . આઈ.આર. ૧૯૮૮ સુ . કો. ૭૦૮ માધવરાવ જે સી ધીયા વિરુદ્ધ શંભાજીરાવ સી.અન્જરે ના ચુકાદાનો અભ્યાસ કરતા પાંચ-૭ મા

ઠરાવે લ, છે કે , It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary state. ઉપરોક્ત ચુકાદો એ .

આઈ.આર. ૨૦૧૨ સુ . કો. ૪૮.

15. In State of Madh. Pra. v. Kaluthawar, 1972 Cri LJ 1639, a Division Bench of the Madhya Pradesh High Court observed as follows:

"It was the duty of the prosecution to make necessary arrangements for the production of its witnesses....

The Police must always remember that it has got a duty to the court and they cannot just send a challan and think that the rest will be done by the court. When nobody appeared in the court to inform what the reason was for non-appearance of the witnesses, the court could legitimately come to the conclusion that the police was not very serious in prosecuting the offence which was a minor one. Under Section 245, the Magistrate can record an order of acquittal if there is no evidence to hold the accused guilty. Only has found him not guilty. Likewise, in *Poban Chandra Majumdar v. Dulal Ghosh* it was held that the order of acquittal was unwarranted by law when in a case instituted on a police report, the Magistrate ordered summons to be issued to the prosecution witnesses, but after certain adjournments without taking any step for procuring the attendance of witness to whom summonses were issued he proceeded further and after examining the accused who pleaded not guilty, passed an order of acquittal. In *State of Bihar v. Polomistry*, it was observed by a single Judge of the Patna High Court as follows: "Where the prosecutor in a criminal trial has himself undertaken to produce the prosecution witnesses the entire responsibility for the production of the evidence in support of the prosecution case is that of the prosecutor. But when the prosecutor has taken recourse to the agency of the Court for securing the attendance of the prosecution witnesses it is undoubtedly the duty of the Magistrate to take steps for securing the attendance of the prosecution witnesses in his court. Where, therefore, in the latter case, none of the prosecution witnesses turn up in spite of the service of the summons issued by the court on them and there are no materials to indicate that there was any reasonable cause for their failure to appear, the proper course for the Magistrate is to take necessary steps to compel the attendance of the witnesses and it is wrong on his part to proceed to acquit the accused on the footing that there is no evidence against them."

On the question as to whether the Magistrate can acquit an accused at all under Section 251A (11), Cr. P. C., if the prosecution failed to produce their witnesses, a Division Bench of the Gujarat High Court observed in *State of Gujarat v. Bava Bhadya* (1962) 2 Cri LJ 537 (2), as follows:

"Where a charge is framed in a warrant case on police report, if owing to the failure of the prosecution to produce their witnesses and owing also to the failure of the prosecution to make full endeavour to serve the summonses according to the provisions contained in Sections 69, 70 and 71, Cr. P. C., 1890, there is no evidence before the Magistrate, the Magistrate can acquit the accused under Section 251A (11)." In *State of Karnataka v. Subramania Setti* 1980 Mad LJ 138: (1980 CA LJ NOC 129), a Division Bench of the Karnataka High Court referring to the decisions in *State of Mysore v. Narasimha Gowda* (1964) 2 Mys LJ 241: (AIR 1965 Mys 167) and the *State of Mysore v. Abdul Hameed Khan* (1969) 1 Mys LJ 4: (1970 Cri LJ 112 (Mys)), observed that the real distinction between the two decisions is as to whether there was remissness and want of diligence on the part of the prosecuting agency in producing the witnesses before the Court and therefore the principle laid down in *Abdul Hameed Khan's* case applied to the facts of the case with which the Division Bench was concerned. We may note here that in *Abdul Hameed Khan's* case, it was found on the facts that the prosecution was not at all diligent as the non-bailable warrants issued to the witnesses had neither been served nor returned to the court by the concerned police and it was therefore

held that where the prosecution was not diligent in producing its witnesses and had failed to serve the bailable warrants on the witnesses and return the same the Magistrate would be justified in refusing to grant an adjournment and to proceed to acquit the accused on the material on record. We may note here that in State of Karnataka v. Subramania Setti 1980 MLJ 138 the Division Bench was dealing with a summons case instituted on a police report.

Madras High Court The State (Tamil Nadu) vs Veerappan And Ors. on 24 March, 1980
Equivalent citations: AIR 1980 Mad 260

Coming now to these appeals, we might note here that the offences with which the respondents-accused have been charged are offences under Sec. 4 (1) (b) of the Tamil Nadu Prohibition Act, and those prosecutions were launched nearly four years ago. Furthermore the prosecution had not, in spite of notices, attempted to produce the witnesses and in fact were quite non-cooperative in their attitude. In view of those circumstances, while pointing out that the acquittal of the respondents accused in the circumstances of these cases is not proper, inasmuch as the court had not discharged its duty as indicated by us as above, we do not want to interfere with that acquittal at this length of time and hence we dismiss these appeals.

સદર કામે રેકર્ડની હકીકત જોતા હાલની ટ્રાયલ ચલાવવામા આવે તો પણ કોઈ મહત્વનો પુરાવો મળી આવે તેમ ન હોઈ અને આરોપીને તે રીતે લાભ મળે તેવા સંજોગોમા મોહનલાલ વિ. સ્ટેટ ઓફ પંજાબ (સુપ્રીમ કોર્ટ) તથા સતીષ મહેરા વિ. દિલ્લી એડમીનીસ્ટ્રેશન નો નામ. સુપ્રીમ કોર્ટનો ચુકાદો ધ્યાને લેતા જ્યારે કોર્ટને ફેરલી એવુ લાગે કે કનવીક્શનની કોઈ શક્યતા રહેલ નથી ત્યારે ફક્ત ફોર્માલીટી માટે પ્રોસીજર કમ્પલીટ કરવાની જરૂરત રહેતી નથી.

તમામ સંજોગો ધ્યાને લેતા આરોપીની મળી આવવાની શક્યતા નહીવત રહેલ હોય સમન્સ ટ્રાયલ કેસ હોય ડિ.પ્રો.કોડની કલમ ૨૫૮ અન્વયે સ્ટોપ પ્રોસીડીંગ કરવામાં આવે છે.

અમદાવાદ

તા. ૧૧/૦૨/૨૦૨૩

(જે.એસ.શાહ)

એડી. ચીફ મેટ્રોપોલીટન મેજીસ્ટ્રેટ

કોર્ટ નં. ૧૦ અમદાવાદ