AIR 1999 SUPREME COURT 3524 "Raj Deo Sharma v. State of Bihar"
= 1999 AIR SCW 3522
(From : Patna)*
Coram : 3 K. T. THOMAS, M. SRINIVASAN AND M. B. SHAH, JJ.**
Crl. Misc. Petn. No. 2326 of 1999, D/- 22 -9 -1999.
[Ed. Note- Directions for speedy trial of criminal cases are given in main judgment in Raj Deo Sharma v. State of Bihar, 1998 AIR SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596. This order is on petition filed by Central Bureau of Investigation seeking for clarification of those directions.]
Raj Deo Sharma, Petitioner v. State of Bihar, Respondent.
Constitution of India, Art.21 - SUMMONS - SPEEDY TRIAL - Criminal cases - Speedy trial - Directions as to, given in Rajdeo Sharma v. State of Bihar, 1998 AIR SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596 - Supreme Court ordered that those directions should be implemented forthwith - Clarifications however, given by Supreme Court in regard to certain contingencies (M. B. Shah, J., contra).
Criminal P.C. (2 of 1974), S.311.
(Per Majority) :- Where a petition was filed for clarification and modifications of the directions given in Raj Deo Sharma v. State of Bihar, AIR 1998 SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596 for speedy trial of criminal cases, it was ordered by Supreme Court that, directions given in Raj Deo Sharma v. State of Bihar, AIR 1998 SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596 should be implemented forthwith. However, Supreme Court gave some clarifications in regard to certain contingencies as follows :-

(i) The directions given in Raj Deo Sharma v. State of Bihar, AIR 1999 SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596 do not curtail the power of Court. Even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the Court under S. 311 of the Code. If evidence of any witness appears to the Court to be essential to the just decision of the case it is the duty of the Court to summon and examine or recall and re-examine any such person.
(ii) Absence of Presiding Officer in a trial Court (either on account of the physical disability or due to the delay in taking over the charge of the Court) is a valid cause which disables the prosecution from addu-cing evidence. So such time can also be excluded by the Court from the period which the Supreme Court have prescribed in the judgment for completing prosecution evidence.
(iii) If the tenure of office of a particular person as Public Prosecutor expires he shall continue to hold office and function as Public Prosecutor until his successor takes charge from him. If the office of a Public Prosecutor falls vacant on account of any other reason, a period of 3 months shall be excluded from the periods fixed under direction No. (i) and (iii) for enabling the State Government to appoint a Public Prosecutor to that office.
(iv) Every High Court is to remind the trial Judges through a circular of the need to comply with S. 309 of the Code in letter and spirit and to take note of the conduct of any particular trial
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Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent Judicial Officer as the law permits.

(v) An additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in the main appeal, and the Court concerned would be free to grant such extension if the Court considers it necessary in the interest of administration of criminal justice. (Paras 9, 10, 11, 14, 15)

Per M. B. Shah, J. (Contra) :- Before appropriate steps are taken for remedying the known causes of delay - without considering the pendency of the matters in all Courts and without finding whether pro-secution agency was at fault for delay or delay was caused for any other reasons, it would not be just or fair, equitable or reasonable to prescribe time limit and give benefit to the accused persons, against whom serious charges are levelled, solely on the ground of delay in trial. If this is continued and permitted, it would affect the smooth functioning of the Society in accordance with law and finally the Constitution. If the victims are left without any remedy, they would resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals. People at large in the Society would also feel unsafe and insecure and their confidence in judicial system would be shaken. Law would loose its deterrent effect on the criminals. Therefore, the Registrars of the High Courts should come up with specific plans for setting up of additional Courts/special Courts (permanent/ad hoc) to cope up with the pending workload on the basis of available figures of pending cases as well as by taking into consideration criteria for disposal of criminal cases prescribed by various High Courts and the directions in the main judgment should be kept in abeyance. (Paras 39, 47)

Cases Referred : Chronological Paras

Raj Deo Sharma v. State of Bihar, AIR 1998 SC 3281 : AIR 1998 SCW 3208 : (1998) 7 SCC 507 : 1998 Cri LJ 4596 15, 18, 25, 26, 27, 31

Common Cause A Registered Society v. Union of India, AIR 1997 SC 1539 : 1997 AIR SCW 290 : (1996) 6 SCC 775 : 1997 Cri LJ 195 5, 22, 26

Common Cause A Registered Society v. Union of India, AIR 1996 SC 1619 : 1996 AIR SCW 2279 : (1996) 4 SCC 33 : 1996 Cri LJ 2380 5, 22, 26

Ganesh Narain Hegde v. S. Bangarappa, 1995 AIR SCW 2364 : (1995) 4 SCC 41 : 1995 Cri LJ 2935 20, 36

Supreme Court Legal Aid Committee Representing Under Trial Prisoners v. Union of India, 1994 AIR SCW 5115 : (1994) 6 SCC 731 30

Kartar Singh v. State of Punjab, 1994 Cri LJ 3139 : (1994) 3 SCC 569 3, 9, 34, 46

A. R. Antulay v. R. S. Naik, AIR 1992 SC 1701 : 1992 AIR SCW 1872 : (1992) 1 SCC 225 : 1992 Cri LJ 2717 2, 3, 18A, 19, 21, 22, 32, 44, 46

State of Maharashtra v. Champa Lal Punjabi Shah, AIR 1981 SC 1675 : 1981 Cri LJ 1273 43

In Re Special Court Bill 1976, AIR 1979 SC 478 : (1979) 1 SCC 380 35

Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1360 : (1980) 1 SCC 81 : 1979 Cri LJ 1036 23, 41

Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369 : (1980) 1 SCC 98 : 1979 Cri LJ 1045 42

Gopal Subramaniam, Sr. Advocate, (Atul Sreedharan), Advocate for M/s. K. L. Mehta and Co., Advocates with him, for Petitioner; Kumar Rajesh Singh, Advocate for B. B. Singh, for Respondent; Altaf Ahmad, Addl. Solicitor General, P. Parmeswaran, A.D.N. Rao, Ashok Bhan, Advocates with him, for CBI, Govt. of India.

* Cri. W.J.C.No. 809 of 1995, D/- 7-12-1995 (Patna).
** (Note:- In this case the Judges of the Supreme Court differ in their views. The Majority view is taken by K.T.Thomas and M. Srinivasan, JJ. And the Minority view by M.B. Shah, J. The Judgments are printed in the order in which they are given in the Certified Copy.- Ed.)
Judgement
THOMAS, J. :- On the facts and circumstances of the case, no notice to any person is necessary in this application.
2. In the main appeal, a three-Judge Bench of this Court to which two of us were parties, has issued certain directions for effective enforcement of the right to speedy trial flowing from Article 21 of the Constitution of India (as recognised by a Seven-Judge Bench of this Court in A. R. Antulay v. R. S. Naik, (1992) 3 SCC 225 : 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 Cri LJ 2717)). Relevant among such directions for the present purpose, are the following :
Direction No. (i) :- In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the Court shall close prosecution evidence on completion of a period
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of two years from the date of recording the plea of the accused on the charges framed whether prosecution has examined all the witnesses or not, within the said period and the Court can proceed to the next step provided by law for the trial of the case.
Direction No. (iii) :- If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the Court shall close prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the Court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the Court considers it necessary to grant further time to the pro-secution to adduce evidence beyond the aforesaid time limit.
3. The present petition is filed by the Central Bureau of Investigation (CBI for short) for clarification (and also for some modification) of the above directions, by stating (1) that the said directions are only prospective and (2) that the time taken by the Court on account of its inability to carry on day-to-day trial due to pressure of work will be excluded. We wish to reiterate that we have not fixed an outer time limit for conclusion of all criminal proceedings in a case. Nor did we go counter to the decisions of the Constitution Benches of this Court in A. R. Antulay v. R. S. Nayak, (1992) 1 SCC 225 : 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 Cri LJ 2717) and Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : (1994 Cri LJ 3139). In paragraphs 12 to 14 of our judgment we have considered the ratio in the aforecited decisions and by keeping track with the observations therein we made the endeavour to achieve to the possible extent the noble ideal of "speedy trial" which has been held repeatedly by this Court to be an incidence of Article 21 of the Constitution.
4. The whole idea was to speed up the trial in criminal cases to prevent the prosecution from becoming a persecution of the person arrayed in a criminal trial. No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State

machinery and that is the raison d'etre in prescribing the timeframe within which prosecution evidence must be closed.
5. It may be remembered that even the different periods suggested by this Court for closing prosecution evidence in different categories of cases are not unexceptional as could be noted from the two exceptions provided therein. They are :
"(iv) But if the inability for completing the prosecution evidence within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no Court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses (i) to (iii).
(v) Where the trial has been stayed by orders of the Court or by operation of law, such time during which the stay was in force shall be excluded from the aforesaid period for closing the prosecution evidence. The above directions will be in addition to and without prejudice to the directions issued by this Court in "Common Cause" A Registered Society v. Union of India, (1996) 4 SCC 33 : 1996 AIR SCW 2279 : AIR 1996 SC 1619 : (1996 Cri LJ 2380), as modified by the same Bench through the order reported in 'Common Cause' A Registered Society v. Union of India, (1996) 6 SCC 775 : 1997 AIR SCW 290 : AIR 1997 SC 1539 : (1997 Cri LJ 195)."
6. We are inclined to state by way of clarification that the discretion of the Courts in granting further time (exercisable "for very exceptional reasons to be recorded and in the interest of justice" as for Direction No. (iii) above) can be imported in respect of Direction No. (i) as well.
7. According to the CBI a procrastinating accused might take advantage of the said excluding provision "by filing appeal or revision against interim orders and it would indirectly delay the trial without obtaining any stay orders from superior Courts".
8. There is no scope for any such apprehension because the judgment has clearly provided that if the inability for completing prosecution evidence was attributable to the conduct of the accused, the Court is not obliged to close the prosecution evidence at all. If the trial gets postponed on account of pendency of any appeal or revision filed against any interim order even though there was no order of stay it is open to the trial Court to reckon that period also within the
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ambit of clause (iv) extracted above.
9. We may observe that the power of the Court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the Seven-Judge Bench in A. R. Antulay's case, 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 Cri LJ 2717) nor in Kartar Singh's case (1994 Cri LJ 3139), such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the Court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the Court to be essential to the just decision of the case it is the duty of the Court to summon and examine or recall and re-examine any such person.
10. Shri Altaf Ahmad, learned Solicitor General tried to impress upon us that due to systematic causes the prosecutor would be disabled from completing evidence in a trial and hence that time must also be permitted to be discounted. Without concretising which kinds of systematic causes would disable the prosecution from promptly adducing

evidence, we are not inclined to permit the prosecutor to take advantage on any such vague premises. However, we have noticed that absence of Presiding Officer in a trial Court (either on account of the physical disability or due to the delay in taking over the charge of the Court) is a valid cause which disables the prosecution from adducing evidence. So we are of the view that such time can also be excluded by the Court from the period which we have prescribed in the judgment for completing prosecution evidence.

11. Another period which Shri Altaf Ahmad, learned Solicitor General pointed out as causing delay is, when a Public Pro-secutor demits office due to any eventuality there would arise some interval for his successor to take charge. He pleaded that the said interregnum should also be excluded from the aforesaid periods. It is the lookout of the State to see that there is no unnecessary delay in appointing a Public Prosecutor to the existing vacancy. The State cannot take advantage of its own inaction. Nonetheless, to avoid any possible dislocation of the trial on account of any such eventuality we make it clear that if the tenure of office of a particular person as Public Prosecutor expires he shall continue to hold office and function as Public Prosecutor until his successor takes charge from him.If the office of a Public Prosecutor falls vacant on account of any other reason, a period of 3 months shall be excluded from the periods fixed under direction Nos. (i) and (iii) for enabling the State Government to appoint a Public Prosecutor to that office.

12. Section 309(1) of the Code enjoins on every trial Court to continue examination of witnesses from day-to-day until the witnesses in attendance have been completed. The sub-section reads thus :

"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."

13. We cannot permit the trial Court to flout the said mandate of the Parliament unless the Court has very cogent and strong reasons. No Court has permission to adjourn examination of witnesses who are in attendance beyond the next working day.

14. We request every High Court to remind the trial Judges through a circular of the need to comply with Section 309 of the Code in letter and spirit. We also request the High Court concerned 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 the law permits.

15. Shri Altaf Ahmad, learned Additional Solicitor General submitted that unless directions Nos. (i) and (iii) are made prospective from the date of judgment in Rajdeo Sharma, 1998 AIR SCW 3208 : AIR 1998 SC 3281 : (1998 Cri LJ 4596), prosecution in many pending cases would be jeopardised. He pointed out that on the date of the said judgment the period concerned stood expired in many cases. We have bestowed our consideration on the said submission and we find force in it. Possibility of miscarriage of justice resulting therefrom must be averted. We are, therefore, inclined to include a rider that an

additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in the main appeal, and the Court concerned would be free to grant such extension if the Court considers it necessary in the interest of administration of criminal justice. As we suspended the operation of the judgment from 14-5-1999 till today the said time of suspension will stand excluded from the aforementioned additional period of one year.

16. Criminal Miscellaneous Petition is disposed of in the above terms.

17. M SRINIVASAN, J. :- When I read the draft judgment prepared by my learned brother Justice K. T. Thomas, I respectfully endorsed my agreement with the same as I found it to be in accordance with law and justice. But now, I have received the draft judgment from my learned brother Justice A. B. Shah. After going through the same, I am of the opinion that it is necessary for me to express my views by a separate order. I make it clear at the outset that I am entirely in agreement with the view expressed by Justice Thomas and I am unable to persuade myself to agree with Justice Shah.

18. The present petition is filed only for directions/modifications/clarification of the directions of this Court dated 8-10-98 in Criminal Appeal No. 1045 of 1998 (1998 AIR SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596) (vide para 1 of the petition). This is not a petition for review of the judgment in the main appeal. It is also needless to say that this Bench is not sitting in appeal over the judgment in the main appeal. The petitioner herein was not a party as such in the appeal. The Superintendent of Police, CBI, Patna was impleaded as second respondent in the petition for Special Leave to Appeal (Criminal Appeal No. 1177 of 1996) by Court Order dated 9-9-96 and on grant of leave, the appeal was numbered as Criminal Appeal No. 1045 of 1998. In the course of arguments, learned Additional Solicitor General appearing for the petitioner expressly stated that he was only seeking a clarification of the judgment in the main appeal, as according to him, the subordinate Courts are under a wrong impression that the directions contained in the said judgment give no option to them but to close the evidence of the prosecution whenever the periods mentioned in the guidelines are completed. Thus, there is no occasion for this Bench to consider whether the directions contained in the judgment in the main appeal are against law in the sense that they run counter to the earlier judgments of this Court rendered by Constitution Benches. In my humble opinion, it is not open to this Bench to canvass the legality or correctness of the directions contained in the main judgment. The only prayer by the petitioner is to clarify the main judgment, in order that the Subordinate Courts understand the directions contained therein in the proper perspective and carry out the same in letter and spirit.

18A. It is needless to point out that for more than two decades, this Court has been repeatedly emphasising the right of an accused to speedy trial and giving appropriate directions to the State and the subordinate judiciary with a view to reduce the delay in the disposal of criminal matters. The Constitution Bench in Antulay's case, (1992) 1 SCC 225 : 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 AIR SCW 2717) thought fit to lay down certain guidelines. The Court said :

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

While stating that it is neither advisable nor practicable to fix any time limit for trial of offences, the Court took care to say in proposition No. 9 as follows :

"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."
(Underline mine)

19. Thus, the Constitution Bench had in Antulay's case itself contemplated an order to
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conclude the trial within a fixed time in appropriate cases. In fact, in the judgment in the main appeal in the present case, the Court has not fixed any time limit for the conclusion of trial. As such, the Court has only laid down guidelines for closing the prosecution in certain circumstances. There is a difference between fixing a time limit for the disposal of a trial and fixing time limit for the prosecution to complete its evidence. A perusal of the guidelines contained in the main judgment would themselves show that there is no hard and fast rule applicable to every case, irrespective of facts and circumstances thereof. If the delay is not due to any fault of the prosecution, it is open to the prosecution to place the relevant facts before the Court and seek further time for producing its evidence. It is clear from the last part of clause 3 in paragraph 16 of the judgment. Even though, there is no express exception similar to that in clause 1 in paragraph 16, the same position will obtain. The judgment in the appeal cannot be understood as punishing the prosecution and preventing the same from adducing evidence even when it is not responsible for the delay.

20. It is necessary to place on record certain facts brought to the notice of the Court when the main appeal was heard. In the State of Bihar alone, several cases were pending for more than 25 years. A report submitted by the Special Judge, CBI Court in December, 1996 pointed out that in one case which was pending from 1982, the prosecution had cited as many as 40 witnesses, but had examined only 3 witnesses upto 1996; the last of them was examined on 3-9-93. The report also pointed out that thereafter, the prosecution had taken 36 adjournments to examine the remaining witnesses, but had not produced even one of them. There were hundreds of such cases and if this Court is going to look on helplessly by merely reiterating that right to speedy trial is a fundamental right enshrined in Article 21 of the Constitution of India, but no time limit could be fixed for conclusion of trials, the problem will remain unsolved for ever. It is stated by my learned brother Justice Shah that the accused would get undeserving benefit by the time limit prescribed in the judgment in the main appeal and it may result in doing injustice to the society. It is also observed by him that "all the beneficiaries of the large scale frauds, all the employees who have misappropriated large sum of money from the public exchequer or private employer or accused who are tried for corruption cases would get undeserving benefit at the system of implementation of law". With respect, I am unable to agree. In fact, Justice Shah has himself quoted, a passage in the judgment in Ganesh Narain Hegde v. S. Bangarappa, (1995) 4 SCC 41 : 1995 AIR SCW 2364 : (1995 Cri LJ 2935). In that passage it is pointed out that when the case reaches the stage of trial after all the interruptions by the higher Courts, the time would have taken its own toll, the witnesses

are won over, evidence disappears and the prosecution loses interest. It is unnecessary to point out that when the prosecution delays the production of its witnesses, the failing human memory of such witnesses could be certainly advantageous to the accused and even in such cases, there will be a failure of the system. The problem is one of basic human rights of persons languishing in prison for years together which in several cases exceed the maximum period of punishment prescribed for the offences alleged to have been committed by them even before the trial is concluded. Even if the accused are not in prison, they would be suffering from immense mental agony as if a dagger is hanging over their heads. Can they be compensated if they are found to be innocent at the end of the trial?

21. As pointed out in Antulay's case, the Court has to balance and weigh the several relevant factors and determine in each case whether the right to speedy trial has been denied in the given case. It is only to enable the subordinate Courts to apply the right balancing test or balancing process, the guidelines have been given in the judgment in the main appeal.

22. The judgment has also taken care to mention that the directions given therein are only to supplement the propositions laid down by the Constitution Bench in Antulay's case, 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 Cri LJ 2717) and also in addition to and without prejudice to the directions issued by this Court in "Common Cause" case, (1996) 4 SCC 33 : 1996 AIR SCW 2279 : AIR 1996 SC 1619 : (1996 Cri LJ 2380) and (1996) 6 SCC 775 : 1997 AIR SCW 290 : AIR 1997 SC 1539 : (1997 Cri LJ 195).

23. I am unable to appreciate how the operation of a judgment rendered by the Court can be

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held in abeyance indefinitely when there is no appeal or review against the same. Prayer 'a' in the petition is unsustainable and it cannot be countenanced by this Bench. As regards prayer 'e', directions were being given by this Court again and again ever since Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81 : AIR 1979 SC 1360 : (1979 Cri LJ 1036) to the State Governments and it is mandatory duty of all the State Governments to take appropriate steps to comply with such directions. If the State Governments are interested in the proper administration of justice, they should fulfill their constitutional obligations, as repeatedly pointed out by this Court in its earlier judgments.

24. In the result, the only clarifications which are required to be made are found in the order of Justice Thomas and I express my concurrence with the same. Neither prayer 'a' nor prayer 'e' can be granted as stated by my brother Justice Shah.

25. SHAH, J:- I am having the advantage of going through the judgment rendered by my learned brother K. T. Thomas, J. With all respect and humility, I consider that the directions given in Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507 : 1998 AIR SCW 3208 : AIR 1998 SC 3281 : (1998 Cri LJ 4596) require to be kept in abeyance and appropriate directions as prayed for in prayer (e) of the Criminal Miscellaneous Petition require to be granted.

26. The Central Bureau of Investigation has filed this petition for directions/modification/clarification of the directions issued by the Three-Judge Bench of this Court on 8-10-1998 in Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507 : 1998

AIR SCW 3208 : AIR 1998 SC 3281 : (1998 Cri LJ 4596). In the said application, following prayers are made requesting the Court to :-
(a) Order holding in abeyance the operation of the Judgment/Order dated 8-10-1998 of this Hon'ble Court in Criminal Appeal No. 1045 of 1998;
(b) Clarify that the Judgment/Order dated 8-10-1998 in Criminal Appeal No. 1045/98, would only have prospective effect;
(c) Clarify that the time taken by the Courts on account of their inability to carry on day-to-day trial on account of pressure of work will be excluded.
(d) Clarify that the exceptions made in Para 4 of the 1st Common Cause Judgment reported in (1996) 4 SCC 33 : 1996 AIR SCW 2279 : AIR 1996 SC 1619 : (1996 Cri LJ 2380) and Para III of 2nd Common Cause Judgment reported in (1996) 6 SCC 775 : 1997 AIR SCW 290 : AIR 1997 SC 1539 : (1997 Cri LJ 195) would still continue.
(e) Issue directions to the State Governments and Registrars of the High Court to come up with specific plans for the setting up of additional Courts/Special Courts (permanent/ad hoc) to cope up with the pending work load."
27. In Raj Deo Sharma's case, 1998 AIR SCW 3208 : AIR 1998 SC 3281 : (1998 Cri LJ 4596), after considering the various decisions, the Court inter alia directed in paragraph 17 as under :-
(i) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the Court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not within the said period and the Court can proceed to the next step provided by law for the trial of the case.
(ii) .....
(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the Court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the Court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the Court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time-limit.
(iv) and (v) ....."
28. It is true that ideal situation may be where criminal cases are tried within six months from the date of institution, and appeals are disposed of within a period of one year from the date of filing. For achieving this ideal situation, if there is lack of infrastructure and procedural delays for
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various reasons, then what is required to be done? In such a situation, would it be justifiable to acquit the accused after lapse of a particular time if prosecution has failed to examine all witnesses? And, whether the appeal could be dismissed if the appellate authority fails to decide the same within a particular time? To do so, in my view, would not be just and fair for the society and the victims affected by the crimes.
29. The aforestated directions issued in the case virtually prescribe time limit to close the prosecution evidence in cases where the offence is punishable with imprisonment for a

period not exceeding seven years or for a period exceeding seven years. In view of these directions the accused may get acquittal on the ground of delay without considering the fact that in number of cases delay might be because of large number of cases pending before the Court and insufficient strength of Judges to cope up with the workload. Delay only due to congestion of Court calendar, unavailability of Judges and on occasions non-availability of counsel for either party or any other circumstances beyond the control of prosecution cannot be a ground for closure of prosecution evidence.

30. It is true that speedy trial in civil or criminal case is a must. It is of much more importance in criminal cases as it has its own effect for the law and order situation in the society. To achieve that objective, there are various provisions in the Criminal Procedure Code including Section 309. It is also true that this Court has emphasized in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of personal liberty must prescribe a procedure which is just, fair and reasonable, that is, a procedure which promotes speedy trial. However, this laudable objective of speedy trial is frustrated for various reasons. Since number of Courts constituted to try various offences under the Indian Penal Code and other Acts are not sufficient and appointment of Judges to man these Courts are delayed; cases have piled up. Therefore, to protect the rights of under-trial prisoners a scheme was evolved by this Court in Supreme Court Legal Aid Committee Representing Under-Trial Prisoners v. Union of India, (1994) 6 SCC 731 : (1994 AIR SCW 5115), for releasing them on bail after lapse of a particular time.

31. Because of the directions in the said judgment after a lapse of a particular time, under-trial prisoners are not kept in jail, still the question remains of their trial. If their trial is delayed for various reasons, would it be just, fair and reasonable to direct the trial Courts to stop further proceedings in the case and dispose of the same without recording further evidence? In some of the cases, allegations against the accused would be of serious nature, such as, corruption which has affected the entire moral fiber of the society, large scale frauds and misappropriations by persons in power or authority and offences against human body including rape. In all such cases, accused including dreaded accused would get undeserving benefit by prescribing the time limit as directed in paragraph 17 in Raj Deo Sharma's case, 1998 AIR SCW 3208 : AIR 1998 SC 3281 : (1998 Cri LJ 4596). In my humble view, this may result in doing injustice to the society, to the victims or the heirs of the victim who is murdered - for such delay in trial they are not responsible. All the beneficiaries of the large scale frauds, all the employees who have misappropriated large sum of money from the public exchequer or private employer or accused who are tried for corruption cases would get undeserving benefit at the system of implementation of law.

32. It is to be stated that the contention of fixing time limit for disposal of criminal cases was considered in Abdul Rehman Antulay v. R. S. Nayak, (1992) 1 SCC 225 : 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 Cri LJ 2717), wherein the Constitution Bench of this Court held that it is sufficient to say that constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code but the relative question for consideration is - "how long a delay is too long?" The Court held that it was not possible to lay down any time schedules for conclusion of criminal proceedings. After considering the various cases for delay, the Court held "it is neither advisable nor feasible to draw or prescribe any outer time-limit for conclusion of all

criminal proceedings". The Court further observed that (Para 51 of AIR SCW, AIR and Cri LJ) :
"Some offences by their very nature e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants,
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cases of corruption against high public servants and high public officials take longer time for investigation and trial. Then again, the workload in each Court, district, region and State varies. This fact is too well-known to merit illustration at our hands. In many places, requisite number of Courts is not available. In some places, frequent strikes by members of the Bar interfere with the work schedules. In short, it is not possible in the very nature of things and present day circumstances to draw a time limit beyond which a criminal proceeding will not be allowed to go. Even in the USA, the Supreme Court has refused to draw such a line..... It is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory."
33. Finally, after considering various contentions, the Court in paragraph 86 (of SCC) : (Para 54 of AIR SCW, AIR and Cri LJ) inter alia held thus :-
"(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 workload of the Court concerned, prevailing local conditions and so on - what is called, the systematic 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.
(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 USA too has 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 ineffectuates the guarantee of right to speedy trial."

34. Even in the case of Kartar Singh v. State of Punjab, (1994) 3 SCC 569 : (1994 Cri LJ 3139), the Constitution Bench has not laid down any precise time limit during which, if the case is not disposed of, accused is to be discharged by holding that it would depend upon the facts and circumstances of each case and the Court has to adopt balancing approach by taking note of possible prejudges delay and to determine whether the accused in criminal proceedings has been deprived of speedy trial with unreasonable delay.

35. At this stage, it would be worthwhile to refer to the reasons for delay in disposal of criminal cases as succinctly summarised by Krishna Iyer, J. in the case of Re Special Courts Bill 1976, (1979) 1 SCC 380 : (AIR 1979 SC 478), while dealing with the contention that the Special Courts Bill, 1976 was violative of Article 14 of the Constitution of India. The learned Judge observed thus at page 442 (of SCC) : (at P. 523 of AIR) :-

"It is common knowledge that currently in our country Criminal Courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions, not to speak of the contribution to delay by the Administration itself by neglect of

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the basic necessaries of the judicial process. Parliamentary and pre-legislative exercises spread over several years hardly did anything for radical simplification and streamlining of criminal procedure and virtually re-enacted, with minor mutations, the vintage Code making forensic flow too slow and liable to hold-ups built into the law. Courts are less to blame than the Code made by Parliament for dawdling and Governments are guilty of denying or delaying basic amenities for the judiciary to function smoothly. Justice is a Cinderella in our scheme. Even so, leaving V.V.I.P. accused to be dealt with by the routinely procrastinating legal process is to surrender to interminable delays as an inevitable evil. Therefore, we should not be finical about absolute processual equality and must be creative in innovating procedures compelled by special situations."

36. The aforesaid observations were again referred to by Mukherjee, J. in Ganesh Narain Hegde v. S. Bangarappa, (1995) 4 SCC 41 : 1995 AIR SCW 2364 : (1995 Cri LJ 2935). In that case a contention was raised that a complaint filed under Section 500 of the Indian Penal Code should not be allowed to be proceeded with after a lapse of a period of 12 years. While rejecting the said contention, the Court held that the complainant was certainly not responsible for the delay. The learned Judge thereafter referred to the aforesaid paragraph and observed (Para 18 of AIR SCW and Cri LJ) :-

"The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll; the witnesses are won over; evidence disappears, the prosecution loses interest - the result is an all too familiar one. We are said to say that repeated admonitions of this Court have not deterred superior Courts from interfering at initial or interlocutory stages of criminal cases. Such interference should be only in

exceptional cases where the interests of justice demand it; it cannot be a matter of course."
37. Without multiplying various observations in other cases, the reasons for delay could be summarized as under :-
(i) The procedure is dilatory;
(ii) No effective steps are taken for radical simplification and streamlining criminal procedure except re-enacting with minor mutations;
(iii) Various appeals, revision applications, repeated anticipatory bail as well as regular bail applications and petitions under Articles 226 and 227 are entertained which is also a cause for delay in disposal of cases finally; FIRs and charges are quashed; lot of time is wasted in deciding interlocutory applications; slow motion becomes much slower when politically powerful and rich people figure as accused because of various contentions raised by filing interlocutory applications for getting benefit of technicalities despite various provisions in the Code;
(iv) Dockets are heavy; arrears are mounting; even the service of process is delayed;
(v) Neglect of the basic necessaries of judicial process by the administration (as observed "Justice is Cinderella in our scheme"). Governments are guilty of denying amenities for the judiciary to function smoothly;
(vi) If ever the case reaches the stage of trial, the time taken for reaching that stage has its own toll resulting in acquittal of more than 90% of those who are tried.
38. For remedying the aforesaid causes for delay in disposal of criminal cases, it is time for
(a) the judiciary;
(b) the legislature; and
(c) the State Governments
to take effective steps.
39. Before appropriate steps are taken for remedying the known causes of delay - without considering the pendency of the matters in all Courts and without finding whether prosecution agency was at fault for delay or delay was caused for any other reasons, it would not be just and fair, equitable or reasonable to prescribe time limit and give benefit to the accused persons, as against whom serious charges are levelled, solely on the ground of delay in trial. If this is conti-nued and permitted, it would affect the smooth functioning of the Society in accordance with law and finally the Constitution. If the victims
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are left without any remedy, they would resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals. People at large in the Society would also feel unsafe and insecure and their confidence in judicial system would be shaken. Law would loose its deterrent effect on the criminals.
40. Figures of pending criminal cases are easily available. Disposal criterion is known. Applying the said disposal criterion, it would be apparent that workload of various Courts is so heavy in number of Courts that with the present strength of Judges who are required to deal with criminal cases, it would be almost impossible for them to dispose of the cases within the prescribed time. It is true that in such a situation without any further delay or without having exercise of appointing committee or committees for finding out how many Judges are required, on ad hoc basis, the strength of Judges who can deal with

the criminal cases is required to be increased. Further, until there is radical simplification and streamlining of Criminal Procedure Code as well as the method of investigation of crimes, it would not be just and reasonable to close the prosecution evidence solely on the ground of delay in trial.

41. This is what was contemplated by this Court before two decades in Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81 : AIR 1979 SC 1360 : (1979 Cri LJ 1036), wherein a Three-Judge Bench of this Court considered that there is notorious delay in disposal of cases; it is sad reflection on the legal and judicial system that the trial of an accused should not even commence for long number of years; even the delay of one year in the trial in the commencement of the trial is bad enough; how much worse this could be when the delay is as long as 3 or 5 or 7 or even 10 years; speedy trial is of the essence of criminal justice. Thereafter the Court posed the question : whether because of such delay accused should be unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental rights under Article 21? That question was not decided, but the Court observed as under (Para 5 of AIR and Cri LJ) :-

"But one thing is certain and we cannot impress it too strongly on the State Government that it is high time that the State Government realised its responsibility to the people in the matter of administration of justice and set up more Courts for the trial of cases. We may point out that it would not be enough merely to establish more Courts but the State Government would also have to man them by competent Judges and whatever is necessary for the purpose of recruiting competent Judges, such as improving their conditions of service, would have to be done by the State Government, if they want to improve the system of administration of justice and make it an effective instrument for reaching justice to the large masses of people for whom justice is today a meaningless and empty word."

42. That question was further considered by this Court in Hussainara Khatoon's (IV) case at page 98 : (AIR 1979 SC 1369 : 1979 Cri LJ 1045). The Court observed that it is the constitutional obligation of the State to device such procedure as would ensure speedy trial to the accused and the State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. Thereafter the Court observed (Para 10 of AIR and Cri LJ) :-

"It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new Courts, building new Court houses, providing more staff and equipment to the Courts, appointment of additional Judges and other measures calculated to ensure speedy trial."

43. Further, the aforesaid question was considered by a three-Judge Bench in State of Maharashtra v. Champa Lal Punjaji Shah, reported in AIR 1981 SC 1675 : (1981 Cri LJ 1273), wherein the Court has held that fair trial implies speedy trial; while a speedy trial

is an implied ingredient of fair trial; the converse is not necessarily true; a delayed trial is not necessarily an unfair trial, if nothing is shown and there are no
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circumstaces entitling the Court to raise a presumption that the accused has been prejudiced in the conduct of his defence. The Court also negatived the contention that because of long lapse of time, Court should not interfere with the acquittal order or at any rate accused should not be sent back to the prison by observing thus (Para 6) :-
"The offence is one which jeopardises the economy of the country and it is impossible to take a casual or a light view of the offence. It is true that where the offence is of a trivial nature such as a simple assault or the theft of a trifling amount. We may hesitate to send an accused person back to jail as it would not be in the public interest or in the interest of anyone to do so."
44. From the discussion of the aforesaid decisions, it can be stated that delayed trial may not always be unfair to the accused. On occasions, accused take advantage of such delays and it would depend upon the facts and circumstances in each case. The larger Bench of this Court has specifically held in Antulay's case, 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 Cri LJ 2717), "it is neither advisable nor feasible to draw or to prescribe any outer limit for conclusion of all criminal proceedings". In cases where delay for trial rests not on the prosecution agency then it would not be fair to close the prosecution evidence after prescribed period. In any case, before directing to close the prosecution evidence, the nature of offence is required to be taken into consideration.
45. Further, if the provisions of the Criminal Procedure Code, particularly, Section 309 as discussed by my learned brother are strictly adhered to, delay in trial could be reduced to some extent. That may be done by the concerned Judge with active co-operation of the prosecuting agency. At present, the said provision is observed in breach. Once the criminal trial begins, trial Court should see that witnesses are examined continuously in the said case and it should continue from day-to-day until the witnesses in attendance are examined. In any case, for adjourning the matter, reasons should be recorded. If practice of allotting certain sessions cases to a particular Judge for trial and disposal is adopted, it would fasten responsibility with the said Judge to dispose it of within the stipulated time. It is also true that under Section 311 of the Criminal Procedure Code, the Court has ample power to examine witnesses who appear to the Court to be essential for the just decision of the case, but this may further delay proceedings as accused is bound to oppose such exercise of power.
46. In this view of the matter, in my view, prescribing time limit would be against the decisions rendered by the Constitution Bench of this Court in A. R. Antulay, 1992 AIR SCW 1872 : AIR 1992 SC 1701 : (1992 Cri LJ 2717) and Kartar Singh (1994 Cri LJ 3139) cases (supra) as well as other decisions stated above. It would be prescribing time limit which is not provided by Criminal Procedure Code or by any other statutory provision. And finally, it would have an adverse effect in implementation of criminal law.
47. In the result, in my view, prayer (a) of holding in abeyance the operation/order dated 8th October, 1998 in Criminal Appeal No. 1045 of 1998 (1998 AIR SCW 3208 : AIR 1998 SC 3281 : 1998 Cri LJ 4596), requires to be granted. Secondly, prayer (e) also requires to be granted. The Registrars of the High Courts should come up with specific plans for setting up of additional Courts/special Courts (permanent/ad hoc) to cope up with the pending workload on the basis of available figures of pending cases as well as by

taking into consideration criteria for disposal of criminal cases prescribed by various High Courts.

48. It is ordered accordingly.

49. Judgment is pronounced in terms of the majority opinion. Copy of this judgment shall be forwarded to Registrar of every High Court with the direction that every Sessions Judge shall be informed of it for implementation of the directions therein forthwith.

Order accordingly.