

A "COMMON CAUSE", A REGISTERED SOCIETY
THROUGH ITS DIRECTOR

v.

UNION OF INDIA AND ORS.

B NOVEMBER 28, 1996

[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.]

Constitution of India, 1950: Article 21

C *Right to life—Speedy trial—Earlier judgment* of Supreme Court regarding discharge or acquittal of undertrial prisoners—Modification and clarification of earlier judgment—Held, accused concerned are not entitled to earn any discharge or acquittal as per paragraphs 2(a) to 2(f) of earlier judgment if it is demonstrated that the accused concerned seek to take advantage of their wrong or any other action of their own resulting in protraction of trials against them—Phrase "pending of trials" as employed in paragraphs from 1(a) to 1(c) and the phrase 'non-commencement of trial' as employed in paragraphs from 2(b) to 2(f) explained—Additions made in the list of offences to which directions contained in paragraphs 1 and 2 of earlier judgment shall not apply.*

E **Common Cause, A registered Society v. Union of India, [1996] 4 SCC 33, referred to.*

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 1128 of 1986.

F (Under Article 32 of the Constitution of India.)

H.D. Shourie, Petitioner-in-Person.

G Guntur Prabhakar, R.B. Misra, B.B. Singh, (J.R. Das for Sinha & Das, Anip Sachthey, A.S. Bhasme, S.K. Agnihotri, Pravir Choudhary, R. Sasiprabhu, P.R. Seetharaman, M. Veerappa, Raj Kumar Mehta, G.K. Bansal, Shakil Ahmed Syed, Ashok Mathur, S.K. Nandy, Ms. Indu Malhotra, Naresh K. Sharma, Krishnamurthi Swami, P.K. Manohar, Ms. Kamini Jaiswal, Kailash Vasdev, Ms. S. Janani, Gopal Singh, Ms. H. Wahi, D.N. Mukherjee, Shreepal Singh, D.M. Nargolkar and D.N. Mukherjee for the Respondents.

The following Order of the Court was delivered :

A

We have heard learned counsel appearing for the concerned parties in the present proceedings. Having given our anxious consideration to their contentions, we deem it fit to clarify/modify our judgment dated 1st May 1996 in Writ Petition (C) No. 1128 of 1986 as under :

B

- I. The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2(a) to 2(f) of our judgment shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the concerned accused or on account of any other action of the accused which results in prolonging the trial. In other words it should be shown that the criminal proceedings have remained pending for the requisite period mentioned in the aforesaid clauses of paragraph 2 despite full cooperation by the concerned accused to get these proceedings disposed of the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is caused on account of such accused getting stay of criminal proceedings from higher courts. Accused concerned are not entitled to earn any discharge or acquittal as per paragraphs 2(a) to 2(f) of our judgment if it is demonstrated that the accused concerned seek to take advantage of their own wrong or any other action of their own resulting in protraction of trials against them.

C

D

E

- II. The phrase 'pendency of trials' as employed in paragraphs from 1(a) to 1(c) and the phrase 'non-commencement of trial' as employed in paragraphs from 2(b) to 2(f) shall be construed as under :

F

- (i) In cases of trials before Sessions Court the trial shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the concerned cases.

G

- (ii) In cases of trials of warrant cases by magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant

H

A cases by magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commended when charges are framed against the concerned accused under Section 246 of the Code of Criminal Procedure, 1973.

B (iii) In cases of trials of summons cases by magistrates the trials would be considered to have commended when the accused who appear or are brought before the magistrate are asked under Section 251 whether they plead guilty or have any defence to make.

C III. In paragraph 4 of our judgment in the list of offences to which directions contained in paragraphs 1 and 2 shall not apply, the following additions shall be made :

D (n) matrimonial offences under Indian Penal Code including Section 498-A or under any other law for the time being in force; E (o) offences under the Negotiable Instruments Act including offences relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under India Penal Code or under any other law for the time being in force; (q) offences under Section 304-A of the Indian Penal Code or any offence pertaining to rash and negligent acts which are made punishable under any other law for the time being in force; (r) offences affecting the public health, safety, convenience, decency and morals as listed in Chapter XIV of the Indian Penal Code or such offences under any other law for the time being in force.

F It is further directed that in criminal cases pertaining to offences mentioned under the above additional categories (n) to (r) wherein accused are already discharged or acquitted pursuant to our judgment dated 1st May 1996 and they are liable to be proceeded against for such offences pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, G the concerned criminal court shall *suo motu* or on application by the concerned aggrieved parties shall issue within three months of the receipt of this clarificatory order at their end, summons or warrants, as the case may be, to such discharged or acquitted H accused and shall restore the criminal cases against them for being

proceeded further in accordance with law.

A

It is however made clear that in trials regarding other offences which are covered by the time limit specified in our earlier order dated 1st May 1996 wherein the concerned accused are already acquitted or discharged pursuant to the said order, such acquitted or discharged accused shall not be liable to be recalled for facing such trials pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order.

B

IV. Copies of this clarificatory order shall be communicated by the Office of this Court to all the High Courts, Chief Secretaries of all the States and the concerned administrative Heads of all the Union Territories. Registrars of the High Courts shall be requested by the Office to communicate copies of this clarificatory order to all the criminal courts under the control and superintendence of the respective High Courts with direction to send Compliance Reports to the High Courts concerned within three months from the date of receipt of communication of the clarificatory order at their end.

C

D

I.A. Nos. 3-6 of 1996 shall stand disposed of in the light of this clarificatory order.

E

T.N.A.

Petition disposed of.