

**Arun Kumar Sinha Vs. the State**

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**Court :** Kolkata

**Decided On :** Jun-29-1995

**Reported in :** (1996)1CALLT4(HC),99CWN1043

**Judge :** Arun Kumar Dutta, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 197 and 482; ;  
[Prevention of Corruption Act, 1947](#) - Section 5(1) and 5(2); ;[Indian Penal Code \(IPC\), 1860](#) - Sections 21 and 161; ;[Constitution of India](#) - Article 21

**Appeal No. :** Crl. Rev. Nos. 335 and 335(A) of 1993

**Appellant :** Arun Kumar Sinha

**Respondent :** The State

**Advocate for Def. :** Priya Nath Ghosh, Adv.

**Advocate for Pet/Ap. :** Milan Mukherjee and ;Debasis Roy, Adv.

**Judgement :**

**Arun Kumar Datta, J.**

1. By these two Revisional Applications under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code), the Petitioner-accused-Arun Kr. Sinha (hereinafter referred to as petitioner) has prayed the Court for quashing of

the two relevant Criminal Proceedings, being case Nos. 13 & 14 of 1987, now pending before the learned Judge, 1st Special Court, 24-Paraganas Alipore, arising out of Section 'M' Case No. 79 dated 13-3-84, for the reasons stated and on the grounds made out therein.

2. During the hearing, the learned Advocate for the Petitioner, Mr. Milan Mukherjee, had urged only two grounds for quashing of the Proceedings, namely that :

1. It was incompetent for the learned Judge to take cognizance of the alleged offence in the absence of Sanction under Section 197 of the Code, since the alleged offence had allegedly been committed by the petitioner as a public servant in the discharge of his official duty, and

2. On the ground of undue delay in the trial of the aforesaid two relevant cases infringing his right to speedy, trial as enshrined by Article 21 of the [Constitution of India](#).

3. The aforesaid case no. 13 of 1987 had been started on the allegations, Inter-alia, that the Petitioner, who was the Head Accountant-cum-Cashier of 2nd Battalion, Calcutta Armed Police and entrusted to hold in his safe custody Govt. cash belonging to the Office of the Deputy Commissioner of Police, 2nd Battalion, had allegedly misappropriated the sum of Rs. 19, 754.45 p. only in his aforesaid capacity during the period from 18/10/82 to 10/10/93.

4. The other Case No. 14 of 1987 arose on the allegations, Inter-alia, that the petitioner, who was the Head Accountant-cum-Cashier of 2nd Battalion, Calcutta Armed Police and was entrusted to hold in his safe custody Government cash belonging to the Office of the Deputy Commissioner of Police, 2nd Battalion, had allegedly misappropriated the sum of Rs. 84,051.75p. only in his aforesaid capacity, which was detected during the course of physical verification held in that Office on 12/3/84.

5. On the basis of the F. I. R. lodged by the Deputy Commissioner of Police, 2nd Battalion, Calcutta Armed Police, Section 'M' Case No. 79 dated 13/3/83 was

started against the Petitioner for offences punishable under Section 409/477A, Indian Penal Code (hereinafter referred to as I. P. C). The Petitioner-accused was arrested in connection therewith and produced before the judicial magistrate, Sealdah, and was granted bail by the Court. On the prayer of the Investigating Officer, the learned Magistrate by his Order dated 2.7.87 had discharged the accused from the Case, directing him to appear before the Special Judge Ist Court at Alipore, by whom the Case was required to be dealt with, along with the further direction to forward the Case Record before the said Court.

6. The Petitioner had thereafter appeared before the learned Judge, Ist Special court, 24-Parganas, Alipore (hereinafter referred to as Judge), who had also received the case Records from the Court of the learned Magistrate. Even though the investigating Officer had initially sought for time for production of the Sanction Order, the learned Judge by his Order dated 19.1.88 had held that no Sanction Order would be necessary for taking cognizance of the alleged offence for the reasons recorded therein, and had accordingly taken cognizance of the alleged offences in the aforesaid two relevant cases, directing issue of Summons against the Petitioner-accused for his appearance before the Court. On appearance of the Petitioner before the Court on 7-4-88, in obedience to the Summons, he was granted bail by the learned Judge, and the two cases were fixed for supply of copies, to him (petitioner). Even though copies of some of the documents had been supplied to him (accused) the Investigating Officer (for short I.O.) had submitted before the learned Judge on 23-2-89 that there are other documents which are voluminous in nature, copies of which could not be supplied to the accused, and that he (accused) can inspect those documents either at Lal Bazar or in the Court. The learned Advocate for the accused had also submitted before the Court that he wants to inspect the documents in Court. The two cases were accordingly adjourned to 6-4-89 by Court's Order dated 23-2-89 for inspection of the voluminous documents by the accused, directing the I. O. to produce the said documents in Court for the purpose of inspection by the accused on the aforesaid date (6-4-89). But despite a number of opportunities granted to the Investigating Agency for production of the aforesaid relevant voluminous documents for inspection by the accused by Orders dated 6-4-89, 27-5-89, 24-6-89, 12-8-89, 11-11-89, 16-12-89, 27-1-90, 17-3-90, 26-7-90 and 15-9-90 the same could not be

produced by them for inspection by the accused. On 24-11 -90 the I. O. was present in Court with the documents and the accused could inspect some of the documents which could not be completed on that day, whereupon the two cases were adjourned to 5/1/91 for completion of inspection of documents. The Prosecution was directed by the order dated 24-11-90 to take steps accordingly. On 5-1-91 a petition was filed on behalf of the Investigation Agency praying for time for producing documents which had not been produced before the Court on that day, and the two Cases were again adjourned to 10-2-91 for completion of inspection of the documents. The Prosecution was again directed by the Order dated 5/1/91 to take steps accordingly. On the failure of the Investigating Agency to produce the relevant documents for inspection by the accused on 16-2-91, the learned judge did not feel inclined to allow any further time for, the purpose, and had accordingly fixed the two cases for inspection of the documents and consideration of Charge on 23-3-91 by his Order dated 16-2-91. The Prosecution was again directed to take steps accordingly. On 23-3-91 the I. O. had appeared before the Court with documents which were inspected by the accused on that day, but the inspection could not be completed. The two cases were accordingly adjourned to 16-5-91 for completion of inspection of all documents. On the failure of the I/O to appear before the Court with the documents on that day (18/5/91), the two cases were again adjourned to 29-6-91 for completion of Inspection of all documents. The Prosecution was also directed to take necessary steps accordingly. The Investigating Agency had. failed to produce the documents for inspection on that adjourned date on 29/6/91 whereupon the two cases were adjourned to 27/7/91 for the aforesaid purpose. On 27/7/91 the learned P. P. had submitted before the Court that the I/O had not produced the relevant documents for inspection and that he was helpless in this regard because despite best endeavours made by him the I/O was not producing the documents for inspection. In the said circumstances, the learned Judge by his Order dated 27/7/91 had adjourned the Case to 14/9/91 for consideration of Charge. On 14/9/91 the learned P.P. had filed a petition before the Court praying for time for consideration of Charge on the ground that the I/O had not produced the Case Diary, with a further prayer made therein for sending a copy of the Order Sheet to the D.C:D.D, for the failure of the I/O to co-operate with him (P. P.) in the matter. A petition was also

filed on behalf of the accused praying for his discharge on the ground that he is being harassed for the negligence of the Prosecution. The learned Judge by his Order dated 14-9-91 had thereupon allowed a last opportunity to the Prosecution to come ready for consideration of Charge on 30/11/91. The learned Judge in his aforesaid Order dated 14/9/91 had also been constrained to observe that it is a matter of great regret that learned P.P. was not in a position to conduct the case of the Prosecution for want of co-operation on the part of the Detective Department. A copy of the said Order was directed to be sent to the D. C. D. D. for his information and necessary action, and another copy thereof was also directed to be given to the learned P. P. for necessary action at his end. The learned Judge had thereupon framed Charges against the accused in the aforesaid two Cases by his Order dated 30-11.-91, in presence of both the parties, to which he (accused) had pleaded not guilty and claimed to be tried. The two cases were thus adjourned to 3/2/92 for evidence.

7. Even though the aforesaid two cases were fixed for evidence on 3/2/92, the hearing of the cases had to be adjourned on 23/3/92 as no Summons had been issued to the witnesses, and as the learned Advocate for the accused was neither present before the Court. On 4/5/92 petitions were filed on behalf of the accused praying for his discharge from the relevant cases on the ground made out therein, copies of which could not be served on the learned P. P. in his absence. The two cases were accordingly posted to 23/3/92 on which date the Presiding Judge was absent on leave. The two cases stood adjourned to 11-5-92. Even though the accused was present with his lawyer on that date, there were none present for the prosecution for which the two cases had to be adjourned to 12/6/92 for hearing of the petitions filed by the accused. The petitions filed by the accused were eventually heard and rejected by the learned Judge by his Order dated 10/7/92, and the two cases were fixed for evidence on 18/8/92. On 18/8/92, the Prosecution was ready with two witnesses, but petitions were filed on behalf of the accused praying for adjournment of the hearing of the cases on the ground that he would move this Court for appropriate orders. The two cases could not be heard thereafter, In the aforesaid circumstances, and eventually the instant two Revisional Applications were filed before the Court on 19/7/93 for quashing of the relevant Proceedings on the grounds made out therein. This Court by Order dated

11.3.93 had directed stay of all further proceedings in the court below until further orders or till the disposal of the instant two Revisional Applications, as a result on which further proceedings in the court below had remained stayed.

As already indicated above, the relevant two criminal Proceedings are sought to be quashed on the grounds that :

(1) it was incompetent for the learned Judge to take cognizance of the alleged offence in the absence of any Sanction under Section 197 of the Code, as the alleged offences are alleged to have been committed by the Petitioner-accused as a Public Servant in his official capacity, and

(2) on the ground of delay in trial of the relevant two cases infringing his fundamental right to speedy trial. Let me now examine the grounds so made out by the petitioner.

8. To the first ground first. Section 197 of the Code provides that when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Authorities mentioned therein. If the provisions of Section 197 are examined it is manifest that two conditions must be fulfilled before they become applicable; one is that the offence mentioned therein must be committed by a public servant and the other is that the public servant employed in connection with the affairs of the Union or a State is not removable from his office save by or with the sanction of the Central Government or the State Government, as the case may be. The object of the Section is to provide guard against vexatious proceedings against judges, magistrates and public servants and to secure the opinion of superior authority whether it is desirable that there should be a prosecution. If on the date of the complaint itself it is incumbent upon the court to take cognizance of such offence only when there is a previous sanction then unless the sanction to prosecute is produce the court cannot take cognizance of the offence. Naturally at that stage, the court taking cognizance has to examine the acts complained of and see whether the provisions of Section 197

are attracted. If the above two conditions are satisfied then the further enquiry would be whether the alleged offences have been committed by the public servant while 'acting or purporting to act in discharge of his official duties.' If this requirement also is satisfied then no court shall take cognizance of such offences except with the previous sanction. For this purpose the allegations made in the complaint are very much relevant to appreciate whether the acts complained of are directly concerned or reasonably concerned with official duties so that if questioned the public servant could claim to have done these acts by virtue of his office, that is to say, there must be a reasonable connection between the act and the discharge of official duties. It is in this context that the words 'purporting to act in discharge of official duties' assume importance. The public servant can only be said to act or purporting to act in the discharge of his official duties if his act is such as to lie within the scope of his official duties. In [Hari Ram Singh's Case [Hari Ram Singh (Dr) v. Emperor, 43 C W N 50] it was observed that';

'There must be something in the nature of the act complained of that attaches to it to the official character of the person doing it.'

The Supreme Court in *Metajog Dobey v. H.C. Bhari*, : [1955]28ITR941(SC) observed as follows:

'There must be a reasonable connection between the act and the discharge of official duty; the act must be: such relation to the duty that the accused could lay a reasonable claim, but; not a pretended or fanciful claim, that he did it in the course of the performance of his duty.'

Approving these principles, the Supreme Court in *Pukhraj v. State of Rajasthan*, 1973 SCC (Cri) 944 had also observed as follows :

'The intention behind the Section is to prevent public servants from being unnecessarily harassed. The section is not restrained only to cases of anything purported to be done in good faith, for a person with ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor, is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in

terms, because an offence can never be an official duty. The offence would have been committed when an act is done in the execution of duty or when an act purported to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that is committed by a public servant in an actions or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor, need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the 'capacity' in which the act is performed 'cloak of office' and 'professed exercise of the office may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of a duty.'

9. Even assuming that the alleged offences had been committed by the Petitioner-accused as a public servant, who is not removable from his office save by or with the Sanction of the State Government, it could hardly be held, having regard to the alleged offences, that he (accused) had committed , the alleged offences while 'action or purporting to act in the discharge of his official duty'. As already noted, he, while posted as the Head Accbun-tant-cum-Cashier of the 2nd Battalion Calcutta Armed Police, was entrusted to hold in his safe custody Government cash belonging to the Office of the Deputy Commissioner of Police, 2nd Battalion, had allegedly misappropriated the sums of Rs. 19,754.45 p. and Rs. 84,051.75 p. only in his aforesaid capacity during the relevant period. He had allegedly, therefore, misappropriated the aforesaid sums of money by taking advantage of his official position. The acts of his alleged misappropriation were clearly not such to lie within the scope of his official duties, which could neither be attached to his official character. There could not conceivably be any reasonable connection between the aforesaid alleged acts of misappropriation and the discharge of his official duty and the said acts could not be said to bear such relation to his duty

that he could lay a reasonable claim that he did it in the course of performance of his duty. It could neither be said that the aforesaid alleged acts of misappropriation had been committed by him in execution of his duty. That being so, no Sanction under Section 197 of the Code would at all be required for taking cognizance of the alleged offences. The first ground urged by the learned Advocate for the Petitioner is accordingly overruled.

10. To the second ground of delay next. The relevant two cases were started as far back as 13-3-1984. The accused in the two cases were eventually discharged by the learned Magistrate by his order dated 2-7-87 on the prayer of the I/O since the same were triable by the Special Court and not by the learned Magistrate. As already noted, the learned Judge upon appearance of the accused before him in terms of the direction of the learned Magistrate and upon receipt of the Case Records from him (Magistrate) had taken cognizance of the alleged offence on 19/1/88 holding that no Sanction Order was necessary for the reasons stated therein, even though the I/O had initially sought for the time to produce Sanction Orders before the Court. The case was thereafter fixed for consideration of Charge on the appearance of the accused in obedience to the Summons issued by the learned Judge. When the relevant two cases were taken up for consideration of Charge on 23-2-89, it was submitted by the I/O that there are some documents which are voluminous in nature which could not be supplied to the accused, further submitting that the accused can inspect the document either at Lal Bazar or in the Court. Since thereafter despite a number of opportunities granted to the Investigating Agency, the relevant documents had not all been produced before the Court and the inspection of the same by the accused could not be completed, in the circumstances indicated above. The learned Judge had eventually been constrained to take up the two cases for consideration of Charge on 30/11/91 in utter desperation on the failure of the Investigating Agency to allow the accused to complete the inspection of the voluminous documents in terms of the orders issued from time to time. The learned Judge had framed Charge in the two cases on that day (30/11/91) and had fixed the cases for evidence on 3/2/92. On 4-2-92, petitions were filed on behalf of the accused praying for discharge, copies of which had subsequently been served upon the learned P.P. ; and the said petitions were eventually rejected by the learned Judge by his order dated 10/7/92. On prayer of

the accused thereafter to move this Court, the two cases could not be taken up for evidence/trial by the learned Judge; and further proceedings in the relevant two cases were also stayed by order of this Court dated 11-6-93, which is still in force. In view of what has been stated above, there could be no denying that there had been quite some delay in proceeding with trial of the aforesaid two relevant cases. From the discussions above, there could neither be any mistaking that the Prosecution/investigating Agency had mainly contributed to the delay by not allowing complete inspection of the voluminous documents to the accused in terms of the prayer made by the I/O himself, despite repeated opportunities granted to him (I/O) from time to time. Eventually, the learned Judge was constrained to take up the two cases for consideration of Charge on 30/11/91 without allowing complete inspection of the relevant documents to the accused in utter desperation. Instead of doing so, to the prejudice of the accused, the Court should better have compelled the Investigating Agency to produce 'all the relevant documents for complete inspection of the same for proceeding further in the two cases.

11. After framing of Charge on 30/11/91 the two cases were fixed for evidence on 3/2/92. And, there does not seem to have been any much delay in proceeding with the same on the failure of the Prosecution/Investigating Agency to proceed therewith. Per-contra, the Petitioner-accused had himself contributed to some delay in the trial of the two cases thereafter by filing petitions for his discharge, even though the Prosecution was ready with two witnesses on 18/8/92. On prayer of the accused, the trial of the two cases could not proceed since he had sought to move this Court in revision, and had eventually obtained an order of stay of all further proceedings from this Court on 11-6-93, which is still in force.

12. Even though there has been quite some delay in proceeding with the relevant two cases, largely, contributed buy the Investigating Agency by not allowing complete inspection of the relevant documents to the accused despite repeated opportunities granted to them, in the facts and Circumstances Indicated above, having regard to the nature and gravity of the alleged offences, allegedly committed by a public servant, entrusted to hold in his safe custody Government cash belonging to the concerned office, by taking advantage of his official position,

I do not feel inclined to quash the relevant two proceedings in the societal interest and in the interest of the administration of justice. Having regard to the manner in which the alleged offences had allegedly been committed by the accused, a public servant, he should be brought to book and appropriately punished, if found guilty on trial, in the interest of the society in general, and in the interest of public service in particular. I would, accordingly, propose to direct early trial and disposal of the relevant two cases in terms of the guidelines issued by the supreme Court in the case of A. R. Antulay etc.

13. While proposing to issue such direction, I must observe that the learned Judge was not at all justified in framing charge against the Petitioner-accused in the relevant two cases on 30/11/91, as he did, without allowing him complete inspection of the voluminous documents, copies of which were admittedly not supplied to him, for which a number of dates were fixed, as indicated above. In terms of the provisions of Section 173 of the Code, as it now stand, the Police Report as envisaged in Section 173(2) has to be accompanied by all the documents and statements of witnesses mentioned therein in terms of sub-section (5) thereof. Sub-section(7) thereof further provides for supply of copies of documents referred to in Sub-section (5) to the accused. Section 207 of the Code as well provides that the Magistrate shall without delay furnish to the accused, free of cost, copies of the documents specified therein, including any document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-section (5) of Section 173. The second proviso to Section 207 provides that if the Magistrate is satisfied that any document referred to in Clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through Pleader in Court. The Supreme Court in Satya Narain and Ors. v. State of Bihar, 1980 Cr. LJ 327 has also observed in Paragraph 11 thereof that the Court before proceeding into a case is under a duty to enquire whether the accused has been furnished with copies of all relevant documents received under Section 173 by the Court.

14. Sub-section (5) of Section 173, Cr. P. C. was not there in the statute book prior to the amendment of Cr. P. C. in the year 1973. The pre-amended Code of Criminal Procedure did not ensure the service of copy of the chargesheet

containing all the material papers relied upon by the prosecution, but only left the same to be done by the investigating police officer. As the same was visited in breach very often causing prejudice to the accused, with an avowed object of apprising the accused of accusation against him, by service of those papers, constituting a charge-sheet, Sub-section (5) was introduced into Section 173, Cr. P. C. Its requirement of accompaniment of the copies of the charge-sheet under Section 173(2) Cr. P. C. to be submitted to the Court, is mandatory and not directory. This mandatory requirement of service of copies of the charge sheet and accompaniment of the same along with the original police report under Section 173(2) Cr. P. C. is a procedure established by law having genesis in the fundamental right to life and liberty under Article 21 of the Constitution, of India; and if there is an infraction of the same it will be an infringement of the said fundamental right.

15. The Orders of the learned Judge dated 30/11/91 (in the two relevant cases) framing Charge against the accused and fixing the cases for evidence/trial without allowing him (accused) complete inspection of the relevant documents are likely to cause serious prejudice to him, infringing his fundamental right to life and liberty guaranteed by Article 21 of the [Constitution of India](#). The Order of the learned Judge dated 30/11/91 framing Charge against the accused in the relevant cases and fixing the case for evidence/trial, clearly seem to suffer from grave illegality, irregularity and impropriety calling for interference by this Court in revision, for the ends of justice, though not specifically prayed for by the petitioner-accused, once the same has come to the notice of the Court. The said Orders dated 30/11/91 in the relevant two cases be accordingly hereby set aside. The learned Judge is directed to fix another firm date within four weeks from the date of receipt of the copy of this Order and the lower court records for completion of inspection of the remaining relevant documents by the accused, directing the I.O. to produce the same in Court without fail well In time for the aforesaid purpose. The learned Judge shall also direct the accused to complete the inspection of the remaining relevant documents within the period to be specified by him, making clear that he (accused) shall not be allowed to any further delay the proceedings on the plea that the inspection could not be completed, to take advantage of it. The learned Judge shall thereafter take up the matters for consideration of charge afresh after

giving both the parties opportunity of being heard, and shall thereafter proceed with the trial of the relevant two cases with outmost expedition, if charges are framed therein. Since the disposal of the relevant two cases has already been long delayed, the learned Judge shall seek to dispose of the same, as early as possible, preferably within 9 months from the date of receipt of the copy of this Order and the lower Court records.

16. Before parting with the matters, I would like to add with painful disappointment that from the facts and circumstances indicated above there are strongest reasons to suspect that the investigating Agency had deliberately delayed the inspection of the relevant documents by the accused and the consequent trial of the relevant two cases so as to enable him (accused), a Police personnel, for whom they may very well have soft corner and fellow-feeling, to give him a ground for quashing of the relevant proceedings on the ground of delay so as to shield him from the trial of the relevant two cases and ultimate conviction and punishment, if found guilty on trial. The way the investigating Agency had proceeded with the relevant two cases before the court below, as amply and appalling made clear above, would at once seem to give the clearest and conclusive indication that they are not at all keen and interested in proceeding with the trial of the relevant two cases and secure conviction of the accused for the reasons indicated above. If the Investigation Agency/Prosecution if not interested in the trial of the accused in the relevant two cases, I wonder why the two cases had at all been instituted by them? Was it just a face-saving device or an eye-wash to shield the person or persons guilty of misappropriation of Govt. fund amounting to Rs. 19,754.45p. and Rs. 84,051.75p. only. A public servant is alleged to have committed the alleged offence, which are indeed grave, which could hardly be lightly dealt with, the way proceeded with by the investigating Agency so far, as indicated above. The Registrar, High Court, Appellate Side, is accordingly directed to send an extract of this order, containing this and the foregoing paragraph, indicating the case references therein, to the Chief Secretary to the Govt. of West Bengal for his information and such necessary action, as may be deemed fit and proper, and for ensuring that the Investigation Agency/Prosecution proceed with the relevant two cases before the Court below in the manner they should, in view of the nature and gravity of the alleged offences, allegedly committed by a public servant.

17. In view of the discussions above, the instant two Revisional Applications are accordingly disposed of. This Order governs both the Criminal Revision Case Nos. 335 & 335(A) of 1993. The interim order issued by this Court on 11-6-93 be vacated.

Let a copy of this Order and the lower court records be sent down to the Court below forthwith for compliance with this Order.

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