other evidence as may be available record a finding in respect of his age."

(8) Careful perusal of Rule 5(4) indicates that it is obligatory for the Court either to obtain the birth certificate or medical opinion regarding the age physical and Mental condition of juvenile offender while passing orders to consider such medical opinion and such other evidence as may be available before recording a finding in respect of his age. Since the birth certificate was already on the record, it was not essential for the learned Additional Sessions Judge to obtain the medical opinion concerning the age, physical and mental condition of the petitioner. It is well known that medical opinion concerning the age may be obtained by conducting ossification test which itself is not a surer test and the ossification age given by the medical expert after conducting such test may vary on either sides by two years in view of the opinion expressed by Dr. Modi in his Medico-legal Jurisprudence.

(9) For the foregoing reasons, I do not find any merit in this petition and the same is hereby dismissed. However, in case the petitioner wants to be released on bail on the ground of his young age, he may, if so advised, move a separate application for this purpose.

S.C.K.

Before Hon'ble H. S. Brar, J.

RAM KUMAR,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Crl. M. No. 520-M of 1994

31st January, 1995

Code of Criminal Procedure, Quashing 1973—*S.* 482—*Food Adulteration Act,* 1954—*S.* 7, 16/*A*—*Summary Procedure*—*Under what circumstances could a Magistrate depart from summary procedure and resort to procedure of a warrant case*—*It is mandatory for Magistrate to hear parties and record reasons as to why warrants case procedure is to be adopted*—*Failure to do so*—*Complaint liable to be quashed.*

Held, that it is provided under Section 16-A itself, under what circumstances the Magistrate could depart from a summary procedure and could resort to the procedure of a warrant case. According to the second Proviso to Section 16-A of the Act, the Magistrate could depart from the summary procedure only when it appeared to him that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may not have to be passed or that it was for any other reason undesirable to try the case summarily. In that event it was mandatory for the Magistrate to hear the parties and record the order to that effect. The Chief Judicial Magistrate has failed to comply with the specific provisions of the statute as provided under Section 16-A. He has failed to give any reasons to indicate as to what was the natrue of the case that a sentence of imprisonment for a term exceeding one year may have to be passed. He has not even given any other reason which, according to him, could be undesirable to try the case summarily.

(Para 11)

Further held, that the Magistrate was bound to form his judicial opinion in accordance with the specific provisions of the statute provided under Section 16-A of the Act before switching over from the summary procedure to a warrant case procedure, which is lacking in the case in hand and this mistake on the part of the Magistrate has snatched away the Constitutional guarantee of the petitioner of speedy trial emanating from Article 21.

(Para 12)

Further held, that the order of the Chief Judicial Magistrate, Bhiwani, viewed from all angles, is liable to be quashed as he has not complied with the mandatory provisions of Section 16-A of the Act inasmuch as (a) in not giving reasons holding that the nature of the case was such that a sentence of imprisonment for a term exceeding one year may have to be passed or it was necessary to switch over to the warrant procedure for any other reason; and (b) in not giving an opportunity of being heard to the accused before adopting the procedure of a warrant case.

(Para 12)

O. P. Sharma, Advocate, *for the Petitioner*.

Neena Madan, A.A.G. Haryana, *for the Respondent*.

JUDGMENT

Harphul Singh Brar, J.

(1) In this petition under Section 482 of the Code of Criminal Procedure, a prayer has been made to quash the complaint filed under Section 7 read with section 16(1) (a) of the Prevention of

Food Adulteration Act, 1954 (for short, the Act) in the Court of Shri B. K. Aggarwal, Chief Judicial Magistrate, Bhiwani, annexed as Annexure P2 with the petition.

(2) Briefly stated, the factual position is as under :

(3) Food Inspector took a sample of cow milk from the accused-petitioner on December 16, 1987. After completing the due formalities, the sample was sent to the Public Analyst for analysis. On analysis, it was found to be adulterated as it contained milk fat 3.4 per cent and milk solids not fat 8.0 per cent as against 4.0 per cent milk fat and 8.5 per milk solids not fat, respectively, as the minimum prescribed standard of cow milk.

(4) On filing the complaint before the Chief Judicial Magistrate, Bhiwani, the trial Court summoned the accused-petitioner,—*vide* its order, dated February 19, 1988, for March 25, 1988, and adopted summary procedure as mentioned in Section 16-A of the Act in order to proceed against the accused-petitioner. The accused had been attending the trial Court since March 25, 1988, but no prosecution witness was examined except one P.W. on August 6, 1993, and on that very date, the trial Court had passed an order that hence forth the Court would adopt the warrant procedure instead of summary procedure in trying this case. True copy of the order, dated August 6, 1993 is annexed as Annexure P4 with this petition.

(5) In the petition, two main grounds have been taken for quashing the complaint as well as the Summoning order, (i) that more than six years have passed since the sample was taken and the accused petitioner has been facing trial without any substantial proceedings taken by the trial Court. It was only on August 6, 1993 that it was ordered by the trial Court that the case would be tried as a warrant case and not as a summary case, and only one witness had been examined in the Court. In this way, the accused-petitiontr's right to speedy trial which is inalienable fundamental right of a citizen, has been taken away. In such a situation, the accused-petitioner prays for quashment of the complaint and the summoning order and any subsequent proceedings arising therefrom; and (ii) that while switching over from a summary procedure to a warrant procedure, the learned trial Magistrate has violated the mandatory provisions of section 16-A of the Act. Under section 16-A of the Act, according to the petitioner it is mandatory that the Court must hear the petitioner before it abandons the summary procedure and while adopting the warrant procedure the accused

should be given a hearing and the Court must give its reasons while switching over from summary procedure to warrant procedure. The order of the Magistrate to try the present case as a warrant case is not a speaking one and he has not given any reasons for switching over from summary procedure to the procedure of a warrant case. The accused was also not given an opportunity of being heard.

(6) Reply has been filed on behalf of the respondent-State by Shri Abhey Ram, Food Inspector, Bhiwani, wherein it has been stated that the trial Magistrate was competent to switch over from summary procedure to warrant procedure and that the complaint is not liable to be quashed simply on the ground that the accused petitioner is facing trial for the last six years.

(7) The learned counsel for the parties have been heard and records of the case perused. I will deal with the second ground first, as the first ground is closely linked with the second one for the final decision of this case.

(8) In order to deal with the first contention of the learned counsel for the petitioner that the order of the Chief Judicial Magistrate to try the case as a warrant case instead of adopting the summary procedure as provided under section 16-A of the Act inasmuch as no reasons have been assigned for trying the case as a warrant case and the accused having not been given any opportunity of being heard before doing the same, it would be desirable to notice tne statutory provisions of section 16-A of the Act which are in the following terms :

> "16-*A. Power of Court to try cases summarily.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of Section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be. apply to such trial :
>
> Provided that in tne case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year :

Provided further that when at the commencement of, or in the course of, a "summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code."

(9) It will also be appropriate to reproduce the order of the Chief Judicial Magistrate, Bhiwani, in this context, which reads as under :

"*Present* : Daya Kishan Sandal GFI for State Accused on bail with counsel.

One PW is present but,—*vide* order dated 25th March, 1989, accused was given a notice under section 16(1) (a) read with section 7 of the P.F. Act. Since the punishment for committing offence punishable under section 16(1) (a) can be more than one year, so I do not think it proper to try the case in summary way. Thus I order the case to be tried as warrant case. One PW is present and examined. Prosecution closed pre-charge evidence. Now to come up on 13th August, 1993 for consideration of charge.

Sd/-
CJM, Bhiwani
6-8-1993"

(10) In the case in hand, the order of Chief Judicial Magistrate did not disclose any reasons whatsoever as to whether he was satisfied from the facts of this case that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it was for any other reason, undersirable to try the case summarily. If the Magistrate had decided to try the case as a warrant case merely by saying that since the punishment for committing the offence under section 16(1)(a) of the Act can be more than one year and in that event he did not think it proper to try the case in a summary manner, then he has certainly violated the mandatory provisions of section 16-A of the Act, which specifically

provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial.

(11) The Legislature in its wisdom has specifically enacted section 16-A of the Act and they were conscious of the fact that a person guilty of an offence under section 16(1)(a) could be punished for a maximum imprisonment of three years and a fine of not less than one thousand rupees. However, it is provided under section 16-A itself, under what circumstances the Magistrate could depart from a summary procedure and could resort to the procedure of a warrant case. According to the second Proviso to Section 16-A of the Act, the Magistrate could depart from the summary procedure only when it appeared to him that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may not have to be passed or that it was for any other reason undesirable to try the case summarily. In that event, it was mandatory for the Magistrate to hear the parties and record the order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code. In the case in hand, the Chief Judicial Magistrate has failed to comply with the specific provisions of the statute as provided under section 16-A. He has failed to give any reasons to indicate as to what was the nature of the case that a sentence of imprisonment for a term exceeding one year may have to be passed. He nas not even given any other reason which, according to him, could be undesirable to try the case summarily. While switching over to warrant procedure, he has simply stated that ".....Since the punishment for committing offence punishable under section 16(1)(a) can be more than one year, so I do not think it proper to try the case in summary way." It is not discernible either from the order or from the record of this case as to whether before switching over to warrant procedure; the Magistrate gave any hearing to the parties which is requirement of section 16-A of the Act. The petitioner has specifically alleged in the petition that he was not given any opportunity of hearing by the Magistrate before passing the impugned order. More so, the specific assertion made in the petition in this regard has not even been denied in the written statement filed on behalf of the State. The question of mandatory nature of the provisions of section 16-A of the Act is not *res integra*. The mandatory nature of

section 16-A of the Act has been interpreted by a Full Bench of this Court as far back as in the year 1984, in *Budh Ram and another* v. *State of Haryana* (1). It has been ruled in *Budh Ram's case* (supra) that every case under section 16(1)(a) in the first instance shall mandatorily be tried in a summary way unless the Magistrate for the reasons mentioned in the said provision considered it necessary to try the offender in accordance with the procedure prescribed by the Criminal Procedure Code.

(12) The Magistrate was bound to form his judicial opinion in accordance with the specific provisions of the statute provided under section 16-A of the Act before switching over from the summary procedure to a warrant case procedure, which is lacking in the case in hand and this mistake on the part of the Magistrate has snatched away the Constitutional guarantee of the petitioner of speedy trial emanating from Article 21. The provisions of Article 21 of the Constitution of India remind us that right of speedy trial is an inalienable Fundamental Right of a citizen. The accused could not be deprived of a speedy trial by the mistake of the Magistrate who committed an illegality in not trying the case in a summary manner but resorted to the warrant procedure without giving any reasons as was required of him in accordance with the second Proviso to section 16-A. It was due to his negligence that the trial could not be completed speedily in this case. Now, looking at facts of this case in this backdrop, it is apparent on the face of the record that the complaint was filed in the Court in the year 1988, consequent to which the accused was summoned, but the trial of the accused lingered on till the year 1993 when,—*vide* his order, dated August 6, 1993 the Chief Judicial Magistrate ordered that the case be tried as a warrant case but not in a summary manner without adopting the summary procedure provided under section 16-A of the Act. In this way, the trial has prolonged for more than five years far no fault of the accused, and to be precise, rather the trial has not virtually started due to the mistake of the Court. It seems that the Chief Judicial Magistrate did not even bother to have a cursory glance at the provisions of section 16-A of the Act, before passing the impugned order, dated August 6, 1993. The order of the Chief Judicial Magistrate, Bhiwani, viewed from all angles, is liable to be quashed as he has not complied with the mandatory provisions of section 16-A of the Act inasmuch as (a) in not giving reasons holding that the nature of the case was such that a sentence of imprisonment for a term

(1) 1984 (II) F.A.C. 179.

exceeding one year may have to be pased or it was necessary to switch over to the warrant procedure for any other reason; and (b) in not giving an opportunity of being heard to the accused before adopting the procedure of a warrant case.

(13) In the peculiar circumstances of this case, when the trial has lingered on for such a long time not on the basis of the fault of the accused, but due to the wrong procedure adopted by the Magistrate and looking into the percentage of adulteration in milk, i.e. there was a deficiency of 0.6 per cent milk fat and 0.5 per cent milk solids not fat, I think no useful purpose would be served to add to the agony of the accused-petitioner more for a longer time.

(14) Consequently, I allow this petition, set aside the order of the Chief Judicial Magistrate, dated August 6, 1993, quash the complaint and consequent proceedings thereto.

J.S.T.

Before Hon'ble Dr. Sarojnei Saksena, J.

SADA NANDA,—*Appellant.*

versus

INDRA DEVI,—*Respondent.*

F.A.O. No. 8-M of 1987

16th February, 1995

Hindu Marriage Act, 1955—S. 13—First Appeal—Desertion—Forced by conduct of husband, wife sought refuge in paternal home—Whether leaving of matrimonial home by wife constitutes desertion—Held desertion does not mean walking out of house but withdrawal from matrimonial home.

Held, that the appellant has not come forward with a plea that he is willing to take his wife back in the matrimonial home, while the respondent wife has categorically stated so. From her statement, it is evident that after marriage within 2/3 days she was turned out of the house by the appellant as he wanted her to bring valuable articles from her parental home. Thereafter, he started filing petitions for divorce for restitution of conjugal rights and for execution of the decree passed in his favour in the first case filed under Section 9 of the Act but he was all through unsuccessful. It is obvious that she has not deserted him, rather she was forced by his conduct to leave the matrimonial home and have refuge in her