

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ CRL.M.C. No.1656/2011**

**Date of Decision : 24.08.2011**

**RAJESH CHETWAL**

**..... Petitioner**

Through:Mr. D.M. Govardhan, Adv.

Versus

**STATE**

**..... Respondent**

Through:Mr. M.N. Dudeja, APP withMr.  
Ram Gupta, Adv. for R-2.

**CORAM :  
HON'BLE MR. JUSTICE V.K. SHALI**

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|----|-----------------------------------------------------------------------|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ?                               | YES |
| 3. | Whether the judgment should be reported in the Digest ?               | YES |

**V.K. SHALI, J.**

1. This is a petition under Section 482, Cr.P.C. filed by the petitioner for quashing of FIR No. 692/99 registered at Police Station Connaught Place, New Delhi under Section 409/420 IPC.

2. Briefly stated, the facts of the case are that a complaint was lodged by the Chief Manager, State Bank of India, Vijaya Building, 17, Barakhamba Road, New Delhi with Connaught Place Police Station alleging that the SBI has a Central Office at Madam Cama Road, Nariman Point, Mumbai and a local head office at 11, Parliament Street, New Delhi. The Bank provides "Letter of Credit Advising Service" to the customers and non-customer exporters. The exporters enter into contracts with their Overseas Clients for exporting goods and the Overseas Clients arrange Letters of Credit (LC) through their banks. The foreign banks send to SBI, Letter of Credit by mail, telex, swift for further advising to the exporters. Upon receipt of such LCs, the SBI verifies the genuineness of the instruments and enter the details of each LC in its books. Then, it attaches a forwarding letter with the details of the LC and levy thereupon charges to the LC and hand it over to the courier for delivery to the exporters. From the customers, the bank recovers charges by debiting

their account with the Bank and the courier recovers charges from the non-customers before the delivery of the LC to the exporters. Similar procedure is adopted for advising any amendment to the LC.

3. The complainant had also given the scale of quantum of charges which are levied in this regard for different services provided by the Bank. It was alleged that the present petitioner, Rajesh Chetwal, R/o B-1/149, Paschim Vihar, New Delhi, who has worked on the desk of LC Advising as Deputy Manager from November 1992 to May 1996, while advising some LCs/amendments, executed transfers without entering in the books of the Bank and pocketed the commission collected in cash from some exporters. It was further alleged that in order to give it the shape of a genuine transaction and to gain the confidence of the exporters, he sometimes even issued receipts to them. It was alleged that Mr. Chetwal was not authorized to collect the commission and even if he ought to have collected the same, then he should

have deposited it in the Bank. It was also stated in the complaint that the petitioner had drawn an amount of approximately Rs.3.25 lakhs by collecting the commissions from different exporters, namely, M/s. Innovative Textiles Pvt. Ltd., M/s. Nahar Industrial Enterprises Ltd., Ludhiana and M/s. STI Ltd., Bhagwan Dass Road, New Delhi, but the same was not deposited with the Bank. It was also alleged that this fraud came to the notice of the Bank in September, 1996, thereafter, he was transferred immediately and a report was lodged by the Bank against the petitioner for committing fraud and on the basis of the aforesaid complaint, the local police of PS Connaught Place registered an FIR No. 692/99 under Section 409/420 IPC. After investigation, the charge sheet was filed in the competent court. After pro-longed delay, it is stated that the charges against the present petitioner have been framed on 06.05.2009 and the present petition has been filed on 05.04.2011 for quashing the aforesaid FIR on the ground that the

ingredients of Section 409 and 420 IPC are not made out.

4. I have heard the learned counsel for the petitioner at the stage of admission with regard to the maintainability of the petition on the ground of inordinate delay and laches in approaching the Court for quashing of the FIR and the consequent proceedings. He has contended that the inherent powers of the Court under Section 482, Cr.PC are starting with a non-obstante clause and despite the fact that there may be a provision to the contrary in the Cr.PC, still the High Court has the power to pass any appropriate order in a given case to prevent the abuse of processes of law and to secure the ends of justice. The contention of the learned counsel for the petitioner, Mr. Govardhan, is that while framing the charge under Section 409 and 420 IPC against the petitioner, even the ingredients as laid down by the Apex Court in a catena of authorities are not satisfied. It was contended by him that so far as the exercise of power by

the High Court under Section 482 Cr.PC is concerned, that is not conditioned by any law of limitation much less by the doctrine of inordinate delay and laches. The learned counsel for the petitioner has relied upon the judgments of the learned Single Judge of our own Court in **Inder Mohan & Othrs versus The State**, 1972 CriLJ 1569 and **Enforcement Directorate versus Ajay Bakliwal**, 101 (2002) DLT 92, wherein it has been held that Article 131 of the Limitation Act /provisions of the Limitation Act does not apply to the proceedings under Section 482 Cr.PC.

5. It was contended by learned counsel for the petitioner that although the charge sheet in respect of the FIR in question was filed in the year 1999 but the present petition was filed only after framing of charges on account of the fact that the petitioner was quite hopeful that he will be discharged at the stage of framing of charges. He also contended that a petition for quashing of FIR ought not be filed prior to framing of charge.

Reliance in this regard is placed on **Sewak Ram Sobhani Vs. R.K.Karanjiya** AIR 1981 SC 1514.

6. The third submission made by the learned counsel for the petitioner is that even if the question of delay or laches is considered, the right to file the present petition accrued to the petitioner only after framing of charge, which admittedly in the instant case was done on 09.05.2009 and if the cause of action itself accrued on 09.05.2009, for the purpose of filing of the present petition, it could by no stretch of imagination be said that the present petition is belated or that there are any laches on the part of the petitioner so as to deprive the petitioner from getting his present petition adjudicated on the merits of the case.
7. I have carefully considered the submissions made by the learned counsel for the petitioner. I have also gone through the number of authorities cited by the learned counsel for the petitioner.

- (i) **State of Haryana versus Bhajan Lal, 1992**  
*Suppl. (1) SCC 335*
- (ii) **Pepsi Foods Ltd. versus Special Judicial Magistrate, (1998) 5 SCC 749**
- (iii) **Janta Dal Vs. H.S. Chowdhary & Ors. 1992 (4)**  
*SCC 305*
- (iv) **Hridaya Ranjan Prasad Verma & Ors Vs. State of Bihar & Anr (2000) 4 SCC 168**
- (v) **Kailash Kumar Sanwatia Vs. The State of Bihar & Anr 2003 (4) Crimes 50 SC**
- (vi) **Hiralal & Ors. Vs. State of UP 2009 (11) SCC 89**
- (vii) **R.Kalyani Vs. Janak C. Mehta & Ors. 2009 (1)**  
*SCC 516*
- (viii) **Madavrao Jiwaji Rao Scindia & Ors. Vs. Sombhajirao Chandrojirao Angre & Ors. 1988**  
*(1) SCC 692*
- (ix) **Enforcement Directorate Vs. Ajay Bakliwal 2002**  
*DLT (101) 92*

8. Most of these authorities deal with the question of ingredients which are required to be satisfied for an offence under Section 409 or 420 IPC, in cases where there has been a full-fledged trial and thereafter the matter has reached to the Apex Court by way of Special Leave to Appeal, etc.
8. *At the outset, I must mention that these days the effort of the counsel is to burden the Court with number of authorities irrespective of the fact that whether they have application to the facts of the case or not and leave it to the Judge to fend his ways in deciding the matter. Obviously, when the number of judgments cited by a counsel on the same point are large and distinguishable even on merits, there is no use to deal with each and every authority so cited. Further the Supreme court has also observed the trend of the courts relying upon the authorities without taking note of the fact that the fact of the judgment which is reported are different from the one in which its application is sought. This view has*

been expressed by the Supreme Court firstly in **Harayana Financial Corporation Vs. Jagdamba Oil Mills** 2002 (3) SCC 496 where the Apex Court observed that the law laid down by the Apex Court should not be applied like theorem. Similarly, in **Sushil Suri Vs. CBI & Anr** AIR 2011 SC 1713, it has been observed by the Apex Court that difference of one material fact can result in a change of circumstances as a consequence of which ratio of one judgment may not be applicable in the facts of the other case. Meaning thereby, before applying the law laid down by the Apex Court one has to bear in mind the facts of each and every case as to whether the law which is sought to be applied would be applicable or not.

9. Keeping in view, these broad parameters so far as the judgment of Apex Court in **State of Haryana versus Bhajan Lal, 1992 Suppl. (1) SCC 335, Pepsi Foods Ltd. versus Special Judicial Magistrate, (1998) 5 SCC 749, Janta Dal Vs. H.S. Chowdhary & Ors. 1992 (4) SCC 305 and Hiralal & Ors. Vs. State of UP 2009**

*(11) SCC 89 are concerned, they laid down the broad principle of law with regard the petition under Section 482 Cr.P.C. or the powers thereof for quashing of the FIR or the criminal complaint. In **Pepsi Foods case (Supra)** it has also been observed since the order of summoning impairs the personal liberty of a person, therefore, it should not be passed as a matter of course. There is no dispute about the law laid down in these authorities, but certainly they are not applicable to the facts of the present case. So far as the judgment in case titled **Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr. (Supra)** and **Kailash Kumar Sanwatia Vs. The State of Bihar & Anr. (Supra)** with regard to the contention of the learned counsel for the petitioner that no prima facie ingredients of Section 409 or 420 IPC are made out, is concerned, it may be mentioned that both these cases are the cases where the finding has been rendered by the Apex Court after a trial has been undergone. Certainly, the propositions of law*

*laid down in the facts of the said case where a person has faced the trial and the matter has ultimately reached to the Apex Court Cannot be compared with the facts of the present case where the charge sheet was filed in the year 1999 and the charges have been framed in respect of an offence under section 409 or 420 IPC, in the year 2009 which clearly show that the learned Magistrate has framed the charges after due application of his mind. At the stage of framing of charge only prima facie case is to be made out and the guilt of the accused is not to be proved on the touch stone of beyond reasonable doubt. In the instant case also, the learned Trial Judge has already applied its mind and arrived at a reasoned finding that a prima facie case against the petitioner u/S 409/420 IPC is made out and accordingly, it has directed the framing of the charge. The said order was not assailed by the petitioner by way of revision which was to be filed within 90 days and obviously now it is not open to the petitioner to wake up after expiry of almost two*

years and assail the order of framing of charge under Section 409/420 IPC by invoking the provision of Section 482 Cr.P.C contending that the petitioner has changed the counsel and he has been ostensibly advised to do so. If this is permitted to be done, then I am afraid that no trial Court would be able to function. This will be gross abuse of the processes of law. Apart from this, the question which arises for consideration is as to whether the petitioner is barred on account of laches and inordinate delay in invoking the jurisdiction u/S 482 Cr.P.C.

10. So far as the question of application of provisions of the Limitation Act is concerned, I agree with the contention of the petitioner that the same is not applicable and to this extent the judgment of the Single Judge in **Enforcement Directorate Vs. Ajay Bakliwal (supra)** & **Inder Mohan & Othrs Vs The State (supra)** is not in dispute. But the question which arises for consideration

is as to whether the petitioner is barred by principle of inordinate delay and laches on the part of the petitioner in invoking the powers of the High Court under Section 482, Cr.PC.

11. There is no dispute that Section 482 Cr.PC starts with a non-obstante clause and that being unfettered by any provision of law contained in Cr.PC, the High Court is conferred with the powers to pass orders to prevent the abuse of process of law or to secure the ends of justice. There is also no dispute about the fact that no period of limitation has been prescribed by the Limitation Act within which a petition under Section 482 Cr.PC ought to be filed. But the contention which the learned counsel for the petitioner has failed to address convincingly is that the principle of laches or inordinate delay is not applicable to a petition under Section 482 Cr.PC. In this regard, I disagree with the contention of the learned counsel for the petitioner that the principle of laches or inordinate delay is not applicable to the provisions of

Section 482 Cr.PC. In this regard, it may be pertinent to refer to a few judgments of other High Courts which have dealt with similar question.

12. In ***Bata & Others versus Anama Behera, 1990 Cr.LJ 1110***, the learned single Judge of the Orissa High Court observed as under :-

*"Though for filing an application under section 482 there is no limitation, the application should be filed within a reasonable time, so that the progress of the case is not disturbed at a belated stage. A revision petition challenging an order can be filed within 90 days from the date of the order similarly a period of 90 days which is at par with a revision petition should be treated as reasonable time for filing an application under section 482 and if it is filed beyond the period of 90 days the applicant would have to explain the cause of the delay."*

13. Similarly in ***Gopal Chauhan versus Smt. Satya & Anr., 1979 Cr.LJ 446***, it was observed that a petition under Section 482 Cr.PC and Article 227 of the Constitution of India filed after expiry of 3 years from the date of summoning ought not to be entertained when the

case is fixed for the stage of evidence and that too, when the petitioner has approached the Revisionist Court.

14. Thus, although the question of inordinate delay and laches has not been dealt with in many cases but the fact remains that a party who invokes the jurisdiction of the High Court for the purpose of quashing of FIR and the consequent proceedings by embarking on to show that the ingredients of Section 409 or 420 IPC are not made out, is not only required to meet the test of expeditious dispatch of approaching to the Court but he should also be able to show that the facts are so glaring that it calls for interference of the High Court rather than raising the disputed questions of fact. In the present case, the FIR was admittedly registered in the year 1999 and a charge sheet had also been filed in the same year. Therefore, the petitioner was aware as to what are the accusations against him when he appeared before the Court for the first time in 1999 as a complete set of the charge sheet must have been supplied to him. If at all, the petitioner

felt that there was a case for quashing of FIR, he ought to have approached the Court at the earliest possible stage. I agree with the observation made by the Orissa High Court that if a revision against an order of summoning could be filed within a period of 90 days then ordinarily a period of 90 days should have been sufficient to invoke the jurisdiction of High Court under Section 482 Cr.PC. Admittedly, this has not been done and if the period is calculated from 1999, the present petition has been filed after more than 11 years and, therefore, there was inordinate delay and laches on the part of the petitioner for which not even an iota of explanation is forthcoming in the petition.

15. Even if, the contention of the learned counsel for the petitioner that the cause of action for filing the petition accrued to the petitioner only after 09.05.2009 when the charges against him under Section 409 and 420 IPC were framed, is taken to be correct even then from the date of framing of the charge, there has been a lapse of

almost two years in invoking the jurisdiction of this Court. As I have observed hereinabove that a revision against an order ought to be filed within a period of 90 days and the said period has been held by Orissa High Court to be reasonable and sufficient to invoke the revisionary power of a Court, then ordinarily the said period can also be said to be reasonable in normal circumstances while preferring a petition under Section 482 Cr.PC while as in the instant case, there is a lapse of almost two years without there being even an iota of averment in the petition as to what the petitioner was doing during these two years. The learned counsel during the course of argument, had made a submission that he was recently engaged and when on being engaged he found that the charge against the petitioner was not sustainable, he preferred the present petition under Section 482 Cr.PC.

16. I do not agree with the contention of the learned counsel for the petitioner that the change of counsel should be

the ground for entertaining a belated petition under Section 482 Cr.P.C. If that is permitted to be done, then there will be a spate of cases filed by the parties on the plea that the counsel who has filed the petition has been engaged recently as a consequence of which no trial before the Trial Court would be either able to proceed or get concluded.

17. For the reasons mentioned above, I am of the considered opinion that the present petition is highly belated and inordinately delayed as the charge sheet was filed in the year 1999 and since then the petitioner was aware of the allegations against him. Even if the date of cause of action for filing the petition is taken from the date of framing of charge then also there is delay of almost two years in invoking the jurisdiction of the High Court. Therefore, the petition is totally misconceived and the same is accordingly dismissed.

**V.K. SHALI, J.**

**AUGUST 24, 2011  
MA**