

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

+ CRL.M.C. 1229/2009

Date of Decision: 01.11.2011

KARAMBIR SINGH Petitioner
Through Mr. Pradeep Arya with Mr.
Narinder Chaudhry, Mr. V.K.
Chopra, Mr. Rana Kunal,
Mr. Kamal Chhabra, Mr.
Shobhit Mittal, Mr. Anuj tomar
and Mr. Ashish Sharma,
Advocates

Versus

C.B.I. Respondent
Through Ms Sonia Mathur, Advocate for

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

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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 |

M.L. MEHTA, J. (Oral)

1. This petition under Section 482 of Cr. P.C. has been filed by the petitioner against the impugned order dated 22.01.2009 of the Special Judge, CBI, Delhi whereby he had taken fresh cognizance of the offence against him under Section 7, 13 (2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 (for short' the Act'). The prayer is made for quashing of the impugned

order and also the proceedings arising therefrom.

2. The petitioner was working as JE, DDA, New Delhi. A criminal case was registered against him on 24.06.1997 under Section 7 of the Act on the basis of a complaint dated 24.06.1997 of one Radhey Shyam wherein he had alleged that the petitioner demanded bribe of Rs.1,000/- from him for favouring him in not demolishing his PCO booth. The petitioner was charge sheeted on 13.04.1998 in the Court of Special Judge under Section 7 and 13(2) read with Section 13(1)(d) of the Act. The Special Judge vide his order dated 06.02.2003 acquitted the petitioner on account of invalid sanction of his prosecution. The CBI took up the matter for obtaining fresh sanction of his prosecution with the concerned DDA authority. Fresh sanction for prosecution was obtained on 27.11.2003. The petitioner was again charge-sheeted under the same provisions on 18.12.2008 in the Court of Special Judge, who vide his order dated 22.01.2009 took cognizance of the case and ordered for process of trial. The said trial is presently pending before the Special Judge and was stated to be at the stage of consideration of charge.

3. The petitioner has sought quashing of the impugned order dated 22.01.2009 and all proceedings emanating there from on the sole ground of inordinate delay in his prosecution.

4. So far as the facts as noted above are concerned, there is

no dispute that the instant complaint was filed against the petitioner on 24.06.1997 and that the petitioner was already acquitted on account of want of valid sanction of his prosecution and that he was facing trial of the same offence after grant of fresh sanction of prosecution and the matter was still at the stage of consideration of charge.

5. The learned counsel appearing for the petitioner has submitted that the petitioner already having undergone the agony of trial for six years was again made to face the same trial without any fault of his. He submitted that the delay has seriously prejudiced him inasmuch as he would be deprived of his defence which would have been presented. He submitted that he has been deprived of his right of speedy trial and has been ultimately made to suffer because of the acts of omissions and commissions of the respondent/CBI. Learned counsel relied upon the decisions in the cases of **Brij Pal Singh Vs. State**, 83 (2000) DLT 137, **S.K. Mittal Vs. CBI**, 2007 (98) DRJ 238 and **Mahendra Lal Das Vs. State of Bihar and Others**, (2002) 1 SCC 149.

6. On the other hand learned counsel appearing for the CBI submitted that there was no limit prescribed for filing of charge-sheet or for taking cognizance of the offence under the Act. She also submitted that the delay in filing the charge-sheet after the

fresh sanction was due to mishandling of case by some of the CBI officers to whom show cause notices have been issued by the department. She also stated that the CBI deeply regretted the delay in filing the fresh charge-sheet. She relied upon the case of ***Seeta Hemchandra Shashittal and another Vs. State of Maharashtra***, AIR 2001 SC 1246.

7. From the reply of the CBI and also affidavit of Shri Y.P. Singh, Joint Director of CBI, it would be seen that admittedly the fresh sanction dated 27.11.2003 was received in their office on 05.12.2003. The affidavit reveals that the file was kept pending with the different officers of CBI and that ultimately the charge-sheet was filed in the Court of Special Judge on 18.12.2008. From all these it could be seen that the delay has occasioned not because of grant of fresh sanction by the competent authority, but because of the omissions and commissions committed by the different officers of the CBI and that there was no contribution of the petitioner in causing any delay.

8. The case of ***Seeta Hemchandra Shashittal*** (supra) relied upon by learned counsel for the CBI was not applicable to the present case inasmuch as in that case there was delay in giving sanction and no delay was attributed to the investigating agency. In the said case, the charge sheet was filed within a few days of obtaining sanction. However, as is noted here it is otherwise in

the instant case. In the aforesaid case the Supreme Court has clearly emphasized the need for speeding up of trial in the following words:

“This Court has emphasised, time and again, the need for speeding up the trial as undue delay in culminating the criminal proceedings is antithesis to the Constitutional protection enshrined in Article [21](#) of the Constitution. Nonetheless the court has to view it from pragmatic perspectives and the question of delay cannot be considered entirely from an academic angle. In other words, the High Court and this Court, when approached by accused to quash proceedings on the ground of delay, must consider each case on its own facts. Unfortunately the delay has so permeated in our legal system that at all levels tardiness has become the eitmotif. Such a malady has been judicially reprobated and efforts have been made to curtail the delay which has developed as a systemic canker”

9. Similar issue was before this Court in the case of **S.K. Mittal** (supra) wherein this court took note of various judicial pronouncements of the Supreme Court whereby the proceedings under the Act had been quashed on account of delay of prosecution. It was observed that the Supreme Court has been

quashing prosecutions under the Act where delay in the prosecution ranges between 14 and 26 years. In the said case since there was a delay of about 16 years, the proceedings were quashed.

10. In the case of **Brij Pal** (supra) also this court held that where there was nothing on record to show or satisfy that petitioner was responsible for inordinate delay in commencing of trial but the delay was entirely and exclusively on account of fault of the prosecution, the petitioner was to be seriously prejudiced in the conduct of his defence with the passage of time as the witness for the defence may not be available and their memories may fail.

11. The Supreme Court in the case of **Mahendra Lal Das** (Supra) while emphasizing the right of every citizen of speedy trial observed as under:

"It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in Abdul Rehman Antulay & Ors. v. R.S. Nayak & Another MANU/SC/0326/1992 : 1992CriLJ2717 while interpreting the scope of Article 21 of the Constitution held that

every citizen has a right of speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and re-trial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions, etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a preventive proof of prejudice.

6. In this case the prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant-accused of processing disproportionate wealth of about Rs. 50,600/-. The authorities of the respondent-State also appear to be not

satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and exercise in futility.

7. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the concerned appropriate authorities are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending with respect to allegations of corruption are pending against the incumbent. The appellant has further

alleged that he has been deprived the love, affection and the society of his children who were residing in foreign country as on account of the pendency of the investigation he could not afford to leave the country.

8. This Court in Ramanand Chaudhary v. State of Bihar & Ors. [MANU/SC/0201/1994](#) : 1994CriLJ1221 quashed the investigation against the accused on account of not granting the sanction for more than 13 years. The facts of the present case are almost identical. No useful purpose would be served to put the appellant at trial at this belated stage.

9. Keeping in view the peculiar facts and circumstances of the case, we are inclined to quash the proceedings against the appellant as permitting further prosecution would be the travesty of justice and a mere ritual of formality so far as the prosecution agency is concerned, and unnecessary burden as regards the courts."

12. In view of the law as discussed above, I am of the considered view that the petitioner has already suffered the agony of having undergone the protracted trial of seven years and now he was again helplessly made to suffer another round of litigation because of no fault of his. This was a clear case of

unexplained inordinate delay on the part of the investigating agency. The mere issue of show cause notices to the defaulting officers was not enough to recompense the petitioner and his family members and to make him suffer for another round of litigation for several years. Already a period of 14 years has elapsed and the fact that the fresh charge sheet was only at the stage of framing of charges, it may take a more number of years for conclusion of the case at the trial court level. The petitioner shall definitely be deprived of his rights of speedy justice and defence because of no fault or contribution of his. In view of all this, the petition is allowed and the impugned order and all proceedings arising therefrom are hereby quashed. Surety bond and bail bond of the petitioner would stand discharged.

**M.L. MEHTA
(JUDGE)**

November 01, 2011
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