

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.6523 OF 2012

ORDER:

This criminal petition under Section 482 of the Code of Criminal Procedure is filed by the petitioner/A.21 seeking to quash the proceedings in C.C.No.1 of 2011 on the file of the Special Judge for Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement, arising out of offences under Sections 120B, 477-A, 409 and 420 IPC.

The brief facts of the case are as follows. Sri P.Daya Chary, IAS. Director of Social Welfare Department, Hyderabad, lodged a report with Criminal Investigation Department (CID), Hyderabad basing on the report submitted by the Department of Vigilance and Enforcement, Andhra Pradesh, Hyderabad, stating that certain false claims of scholarships were made on fictitious names of Scheduled Castes and Backward Classes College students in respect of 95 educational institutions (both Private and Government Institutions) in twin cities of Hyderabad and Secunderabad, by the Officials of the Office of Deputy Director, Social Welfare, Hyderabad and misappropriated huge Government funds and thereby cheated the Government fraudulently. Hence, the complaint.

Heard and perused the material available on record.

Learned counsel for the petitioner submits that the alleged misappropriation of funds took place during the years 1984-1987, whereas the complaint was lodged with regard to the alleged offence in 1994, after lapse of ten years. Thereafter, the investigating agency filed charge sheet in 2011 and the petitioner is arrayed as accused No.21. He further submits that the petitioner worked as Warden Gr.II at Kattelamandi Hostel, Hyderabad, during the period 01.04.1984 to 24.03.1986 and he was promoted as Assistant Social Welfare Officer and posted at Ramayampet, Medak District, and that the petitioner is in

no way connected to the offence as alleged against him. He further submits that there is an inordinate delay in the proceedings, i.e., the report was given on 21.01.1994, whereas for about twelve (12) years, there was no action on behalf of the prosecution. He further submits that the departmental proceedings initiated against the petitioner were ended with the report that the charges were not proved. Hence, the petitioner is entitled for quashing the complaint insofar as the petitioner/A.21 is concerned.

Learned counsel for the petitioner relied on the Judgment of Hon'ble Supreme Court in **Vakil Prasad Singh v State of Bihar**^[1] and submits that when the right to speedy trial of the accused is infringed, the accused is entitled for acquittal of the charges framed against him. The relevant portion of the said Judgment is extracted as under (paras 24 and 25).

It is well settled that the right to speedy trial in all criminal prosecution is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the Court has to perform the balancing act upon taking into consideration all the attendant circumstances and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

Further, this Court is also inclined to extract relevant portions of Annexure-I annexed to the Letter No.JD/EO/Special/04, dated 23.06.2005, of the Enquiry Officer addressed to the Principal Secretary

to Government, Social Welfare Department, stating that the charges are not proved against the petitioner in the absence of material evidence.

In July, 1989, the case was entrusted to Commissioner of Inquiries. The Commissioner of Inquiries did not conduct the enquiry due to technical and procedural reasons. Subsequently, in G.O.Ms.No.191, SW (X) Department, dated 12.03.1992, the appointment of Sri T.Padmanabhan was withdrawn and entrusted the case to S.R.Sukumara, IPS., who was appointed as Second Commissioner of Enquiries. Sri S.R.Sukumara, IPS., closed the case at his end informing that the case was closed due to non-availability of records vide G.O.Rt.No.491, SW (A1) Department, dated 02.05.1997. Since the Government have appointed as Enquiry Officer, I have conducted and completed my enquiry based on the only material evidence produced by the Presenting Officer, i.e., the report of District Vigilance and Enforcement Officer, Hyderabad. Except this, no material evidence could be produced by the Presenting Officer either touching the charges or to refute the explanations given by the charged officers. In the absence of material evidence, it is not possible for the Enquiry Officer for arriving at conclusions, since the charge proved is to be established beyond reasonable doubt.

The learned counsel for the petitioner rightly argued that when once the petitioner is exonerated for the same charges in the departmental proceedings due to non-availability of records, the complaint against the petitioner/A.21 may be quashed (**Lokesh Kumar Jain v State of Rajasthan**^[2]).

On hearing both sides and also on perusing the Judgments relied on by the learned counsel for the petitioner and the material available on record, this Court is of the view that when once the charges against the petitioner/A.21 is not proved in the Departmental Proceedings, the pendency of trial against the petitioner/A.21 is nothing but an abuse of process of law. This Court is also of the view that no purpose would be served in proceeding with the trial especially in the absence of any material records, as the entire case is based on the material evidence.

In the result, the criminal petition is allowed and the proceedings in C.C.No.1 of 2011 on the file of the Special Judge for Prevention of Corruption Act for Speedy Trial of Cases of Embezzlement, is hereby quashed. The petitioner/A.1 is acquitted of the offences under Sections 120B, 477-A, 409 and 420 IPC. Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE RAJA ELANGO

13.07.2015
pln

[\[1\]](#) (2009) 3 SCC 355

[\[2\]](#) (2013) 11 SCC 130