

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM M-13328 of 2011****Date of decision : 14.09.2015**

A.K. Rana

....Petitioner

V/s

State of Haryana

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Sanjiv Bansal, Advocate for the petitioner.

Mr. Gaurav Dhir, DAG Haryana.

RAJAN GUPTA J.

In this petition under section 482 Cr.P.C., petitioner has sought quashing of FIR No. 1 dated 15.03.2010 (Annexure P-1) registered against him under section 13(1)(d) of the Prevention of Corruption Act at police station SVB, Sector-17, Panchkula as also final report dated 24.10.2010 (Annexure P-7).

Learned counsel for the petitioner has vehemently contended that FIR against the petitioner is an abuse of process of law. According to him, petitioner was found innocent on the same charges in the departmental inquiry and exonerated by virtue of order dated 23.12.2011. As petitioner was exonerated in the departmental proceedings, criminal proceedings are unsustainable. He has relied upon judgment of the Hon'ble Apex court reported as *P.S. Rajya vs. State of Bihar(1996) 9 Supreme Court Cases 1*. Besides, the Vigilance Bureau exonerated the petitioner in the inquiry conducted against him. Whereas charges no. 2 & 3 were not proved, departmental proceedings were recommended in view of charge 1. According to counsel, petitioner has now retired on

January 2012, thus instant FIR as also final report, Annexure P-7 deserves to be quashed.

Prayer has been opposed by learned State counsel. According to him, charges against the petitioner are serious. Inquiry report was re-examined by the Government and it was decided to fix criminal liability of the petitioner. According to him, proceedings against the petitioner have been stayed for the last almost four years despite bar contained in section 19(3)(c) of the Act.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

FIR was registered against the petitioner containing allegations inter alia that while posted as Environment Engineer, Haryana State Pollution Control Board, he received a bribe of ₹40,000/- to ₹50,000/- in lieu of issuing 'No Objection Certificate' to Rice-shellors and Faridabad Industries. Petitioner was a member of the 'B' Committee which he constituted himself after dissolving earlier Committees. As a member, he took ₹40,000/- to ₹50,000/- in the shape of bribe to issue 'NOC' to industries, stone crushers etc. During the period he held the charge of Faridabad Action Plan, he collected monthly bribe from the industrialists. He rejected 'NOC' of Boutique International firm without obtaining permission of the Chairman. Before date of rejection of 'NOC' i.e. 26.07.2007, name of the firm was changed to Boutique Global on a separate file and petitioner granted 'NOC' to this firm without technical deficiencies being removed. Similar other allegations are contained in the FIR. After registration of FIR, investigation ensued and final report was submitted by the investigating agency on 24.02.2011.

In view of serious allegations of corruption leveled against the petitioner, I am of the considered view that there is no ground made out for quashing of the FIR. Perusal of reply filed by way of affidavit of Hemant Kalson, Superintendent of Police, (State Vigilance Bureau), Haryana shows that inquiry report of Vigilance Bureau was considered by the Government. After re-examination, it was decided to fix criminal liability of the petitioner. Chief Secretary came to the conclusion that in view of magnitude of offence and evidence available on file, it was necessary that FIR be registered. Resultantly, FIR no. 1 dated 15.03.2010 was registered against the petitioner under section 13(1)(d) of the Act. Judgment in *P.S. Rajya's* case (supra) cannot help the case of the petitioner as in the said case, accused was charge-sheeted for possessing assets disproportionate to his known source of income. In the departmental proceedings, it was found that there were discrepancies in the reports submitted by the valuers regarding disproportionate assets. Charges were also subject matter of inquiry by Central Vigilance Commission and Union Public Service Commission. They expressed doubts about the valuation reports relied upon by CBI. In peculiar facts and circumstances of the case, FIR was quashed. However, in the instant case, allegation against the petitioner is not of possessing disproportionate assets but of taking bribe from various industrialists. Investigating agency collected evidence to support its stand that petitioner took bribe for issuing 'No Objection Certificates'. Thus, to arrive at a just conclusion, it is necessary that evidence is lead before the trial court. No ground for interference in inherent jurisdiction is made out in view of ratio of judgment reported as ***State of Haryana vs.***

Bhajan Lal 1992 Supplementary (1) SCC 335. It also needs to be noticed that case against the petitioner was registered under 1947 Act whereas instant case has been registered under the 1988 Act. In the new Act, section 19(3)(c) has been incorporated. Honb'le Supreme court dealt with the said provision in judgment reported as *Satya Narayan Sharma vs. State of Rajasthan, (2001) 8 SCC, 607* and held as follows:-

- "25. it is thus to be seen that this Section provides:*
- (a) that no court should stay the proceedings under the Act on any ground and*
 - (b) that no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. To be noted that (b) above is identical to Section 397(2) of the Criminal procedure Code which deals with revisional power of the Court. If Section 19 was only to deal with revisional powers then the portion set out in (b) above, would have been sufficient. The legislature has, therefore, by adding the words "no court shall stay the proceedings under this Act on any other ground" clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even where a Court is exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code.*
- 26. There is another reason also why the submission that, Section 19 of the Prevention of Corruption would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words "notwithstanding anything contained in the Code". Thus the inherent power can be exercised even if there was a contrary*

provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of Madhu Limaye vs MANU/SC/0103/1977:. The State of Maharashtra reported in 1978CriLJ165, Janata Deal vs MANU/SC/0532/1992:. H.S. Chowdhary & others, reported in 1993CriLJ600 and in Indra Sawhney vs MANU/SC/0771/1999:. Union of India and others reported in AIR2000SC498, the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.

27. *We see no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.*
28. *Thus in case under the Prevention of Corruption Act there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the concerned*

Court to expedite the hearing of that petition. However, merely because the concerned Court is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.”

Learned counsel for the petitioner has not been able to convince this court that a case for interference in inherent jurisdiction of this court is made out. Petition is, thus, dismissed.

As proceedings in this case were stayed by a coordinate bench and same continued for almost four years, it is directed that trial court shall endeavor to expedite the trial and conclude the same expeditiously preferably within a period of one year.

September 14, 2015

Ajay

(RAJAN GUPTA)
JUDGE