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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 338/2015 & CrI.M.A.8225/2015**

Date of decision: 21.12.2015

HAWALDAR PANDEY Petitioner
Through Mr.Mohit Mathur, Sr. Adv.
with Mr.R.C. Pathak, Adv.

versus

STATE(GOVT OF NCT OF DELHI) Respondent
Through Mr.M.P. Singh, APP for State.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

The petitioner was made an accused in a case vide FIR No.32/1997 (PS Mandir Marg) which was instituted for offences under Sections 420/406 of the IPC.

The petitioner was the promoter of M/s Indira Petroleum Limited and between the period April 1994 to January 1997, had appointed distributor, dealers and had also enrolled customers for promoting his business in the State of Assam.

“Gagan Gases”, a company in Assam, was approached by the petitioner’s company for accepting the distributorship of LPG in whole of Assam. As a result of an agreement between M/s Indira Petroleum Limited and Gagan Gases, an amount of Rs.53,51,410/- was deposited by Gagan Gases for the supply of LPG. It was alleged

against the petitioner and his company that neither the LPG cylinders were supplied nor the money which was obtained was returned.

Hence, FIR No.32/1997 was instituted for offences under Sections 406/420 of the IPC.

The police after investigation submitted chargesheet under Sections 406/420 of the IPC. However, charges were framed against the petitioner only under Section 420 of the IPC vide order dated 29.07.2005.

The petitioner challenged the aforesaid order on charge but to no avail. The matter went up to High Court and the issue was finally decided on 10.02.2010. Thereafter, finally, formal charges were framed on 29.08.2012.

The Trial Court appears to have made efforts to secure the presence of the witnesses and the victims but none turned up at the trial. Their presence could not be secured even though processes were directed to be executed through the DCP. Neither the victims nor the witnesses were found to be traceable and as a result nobody appeared at the trial despite issuance of notice. Consequently, after closing the case and dispensing with the requirement of recording the statement of the accused/petitioner under Section 313 of the Cr.P.C., the Trial Court acquitted the petitioner by judgment and order dated 29.03.2014.

After a delay of about 22 days, the State preferred Criminal Appeal No.50/2015 before the Additional Sessions Judge-01, Patiala House Courts, Delhi. The Appellate Court, after going through the sequence of events, came to the conclusion that coercive steps were

not taken by the Trial Court to compel the appearance of witnesses and the prosecution case was closed in a hurried manner.

Considering this aspect of the matter, the judgment of acquittal by the Trial Court was set aside and the case was remitted back to the Court below for writing out a fresh order in accordance with law but only after giving two opportunities and sufficient time to the prosecution to bring all the public witnesses. The Trial Court was given the liberty to close the prosecution case if despite coercive steps and providing of ample time for the witnesses to appear before the Court, they did not turn up. For the aforesaid purpose, the petitioner was directed to appear before the Trial Court on 09.01.2015.

The present revision petition is directed against the aforesaid Appellate order.

Mr. Mohit Mathur, learned senior counsel appearing for the petitioner, submitted that a perusal of the Appellate order would reveal that none of the submissions made on behalf of the petitioner were taken into account before setting aside the judgment and order of acquittal by the Trial Court. Even the dates on which the processes were issued for compelling the witnesses to appear before the Court have been incorrectly stated in the order. It was submitted that all the processes were exhausted by the Trial Court and in fact, processes were directed to be executed through the DCP.

Mr. Mathur contended that the occurrence spanned over a period of 3 years i.e. from 1994 to 1997 and now, at this stage, it would only be an exercise in futility to put the petitioner to the rigours of trial. Neither anyone of the victims nor the distributor or any authorised

representative of Gagan Gases have chosen to appear before the Trial Court for pursuing the prosecution case.

While assailing the aforesaid order of remand, it was submitted on behalf of the petitioner that he was one of the promoters/directors of the company and the company had purchased land at various places and had obtained licenses for the import of gases, fire and safety. The company also entered the share market and public issues of the company were issued. However, because of sudden rise in the price of gas in international market, the company could not compete with the public sector companies. Under these circumstances, an offer was made to the distributors to purchase gas cylinders on market price prevalent at that time but the distributors were not ready for the same. The gas cylinders were not returned to the company which had been supplied to the company against security.

The FIR was registered in the year 1997 and the petitioner, it has been argued, faced trial since then till 29.03.2014 when he was acquitted of the offence for which he was charged. From the inception of the life of the company namely its incorporation with the Registrar of Companies, subsequent purchase of land, procurement of license, appointment of distributor and supply of gas, no element of cheating has been pointed out by the prosecution. It was not the case of the prosecution that there was any fraudulent deception of any person.

Lastly, it has been argued that there is a presumption of innocence in favour of an accused and such presumption is almost in the nature of a right of an accused. The aforesaid right of the petitioner has got doubly enforced by his being acquitted by the Trial

Court. The Appellate Court, therefore, was not justified in interfering with the aforesaid judgment and order of acquittal in such a casual and cavalier manner. Along with the right of presumption of innocence, another special right to be enjoyed by any person/accused is the right to speedy trial. No person could be subjected to the process of trial for an indeterminate period, as it would be against the spirit of law and the fundamental rights of a person.

Mr. M.P. Singh, learned APP, on the other hand, submits that on 24.11.2015, some of the witnesses (9 in number) appeared before the Trial Court but they could not be examined as the records of the case was lying with the High Court.

Be it noted that the Trial Court Records were called for by order dated 27.05.2015 passed by this Court with the stipulation that requisition for the same will be issued only 3 days before the next date i.e. 22.07.2015. Thereafter, no order was passed directing the return of Trial Court Records to the court below.

Mr. Singh, further submitted that though the case was lodged in the year 1997, but the delay in disposal of this case is largely attributable to the petitioner as he had put up a challenge to the order on charge and had gone up to the High Court. The matter could finally be decided in the year 2010. Thereafter, when the Appellate Court set aside the order of acquittal and remitted the case back to the Trial Court, the petitioner took about five months in preferring the present revision petition. Thus it was submitted that the State was not to account for the delay in disposal of the case.

A typed copy of the order dated 24.11.2015 passed by the Trial

Court has been produced, by Mr. Singh, for inspection of this Court.

The order records that nine out of many witnesses presented themselves before the Trial Court on 24.11.2015. The evidence of such persons could not be recorded as the case records were lying with the Trial Court.

Amongst the witnesses who presented themselves before the Court on 24.11.2015, majority of them were official witnesses. None of the victims (distributor, dealers and customers) appeared to have presented themselves before the Trial Court.

Learned counsel for the petitioner, therefore, submits that the persons who presented themselves before the Trial Court on 24.11.2015 were not important witnesses. It was, therefore, reiterated that the entire exercise would be a waste of time and no evidence can now be garnered against the petitioner. It has further been submitted that once an accused is acquitted, a right accrues to him and such right cannot be interfered with lightly. The petitioner would also be severally prejudiced in putting up his defence because of long efflux of time. As such, it was argued that the order passed by the Appellate Court requires to be revised and interfered with.

Perused the records. It appears that much delay has occurred in finally disposing the case lodged against the petitioner. It would not be appropriate to attribute the delay to either the investigating agency or to the petitioner. Every accused has a right to pursue his legal remedies. Exercise of such right cannot be termed as an attempt to delay the final determination of the case.

It further appears from the records that the Trial Court had taken

all steps for compelling the appearance of witnesses in the case. It is an accepted axiom of procedural and adjective law that if a person is not conscious of his rights and sleeps over the same, the Courts cannot come to the rescue or revival of such rights.

Considering the aforesaid aspect and fact, the order passed by the Appellate Court does not appear to be correct. If at all, the judgment and order of acquittal passed by the Trial Court was required to be interfered with, the submissions made on behalf of the petitioner also ought to have been discussed. The prosecution cannot be allowed to have the luxury of showing slackness and displaying a lackadaisical approach in bringing forthwith prosecution witnesses in support of its claim. Every person/citizen/accused has a right of speedy and fair trial.

The purpose of trial is only to find out the truth and punish the guilty. With the passage of time, it does not appear to be probable that witnesses, if brought before the Trial Court, would be in a position to state anything touching the merits of the case.

Likewise, as stated earlier, it would be extremely difficult for the petitioner to arrange for his defence.

There ought to be a finality in matters of dispensation of criminal justice.

Taking into account the facts of the case, the circumstances in which the petitioner was acquitted by the Trial Court and the accusations levelled against him, this Court is of the view that the effort of the Trial Court in holding trial of the petitioner would be wasted.

For the reasons aforestated, the order dated 18.12.2014 passed by the Appellate Court is set aside.

The petition is allowed and disposed of accordingly.

Crl.M.A.8225/2015

1. In view of the petition having been disposed of, the instant application has become infructuous.
2. The application is disposed of accordingly.

ASHUTOSH KUMAR, J

DECEMBER 21, 2015

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