

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 208 of 2016

Order Reserved On : 05/09/2016

Order Passed On : 23/12/2016

- Dr. N. P. Sharma S/o Late Akhila Nand Sharma, Aged About 73 Years R/o Daripara Ambikapur P.S. & Tahsil Ambikapur District Surguja Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Home Mahandi Bhawan, New Raipur District Raipur Chhattisgarh
2. The Secretary of Department Of Law Mahandi Bhawan New Raipur District Raipur Chhattisgarh
3. The Additional Director General Chhattisgarh State Bureau Of Investigation Of Economic Offences In Front Of Jai Jawan Petrol Pump Raipur District Raipur Chhattisgarh
4. Superintendent Of Police, Chhattisgarh State Bureau Of Investigation Of Economic Offences In Front Of Jai Jawan Petrol Pump Raipur District Raipur Chhattisgarh

---- Respondent

For Petitioner : Shri A.N. Pandey, Advocate.
For Respondent/State : Shri Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. In this petition under Article 226 of the Constitution of India, the petitioner is seeking quashment of the criminal proceeding

initiated vide Crime No.15/94 registered by the Economic Offence Investigation Bureau, Raipur against the petitioner and 2 other accused persons for committing offence under Sections 120-B and 420 of the IPC and under Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. He is also seeking quashment of the order passed by the Special Judge (PC Act) Surguga, Ambikapur on 5.8.2016 (Annexure-P/2) whereby the petitioner's application under Section 227 CrPC for discharge has been rejected. He is also seeking quashment of the sanction order dated 7.9.99 (Annexure-P/8).

2. Case against the petitioner, in short, is that at the relevant time the petitioner was posted in the District Hospital, Ambikapur. He along with the then CMHO and accountant entered into a criminal conspiracy, violated the Store Purchase Rules to purchase medicines at highly inflated rates causing loss to the state exchequer and earned profit for themselves. They have also purchased medical equipments on inflated rates. In both the transactions, they have earned commission to the extent of 25% from the supplier firms.
3. It is argued that initially the Investigating Officer did not find any offence against the petitioner, therefore, Khatma report was submitted, however, the trial Court wrongly rejected the Khatma report and took cognizance of the matter. It is also argued that

the petitioner has not committed any offence and it is a case of no evidence, therefore, the petitioner would be harassed in a vexatious trial.

4. Per contra, learned State Counsel would argue that whether or not the petitioner has committed offence is a matter of evidence. According to him, for the present, no case for quashing criminal proceeding is made out.
5. In **State of Maharashtra & Ors. Vs. Arun Gulab Gawali & Ors**¹, it has been held by the Supreme Court that powers under Article 226 of the Constitution for quashing criminal proceedings have to be exercised very sparingly, with circumspection, that too in very rarest of rare cases.
6. In **Bharat Amratlal Kothari and another Vs. Dosukhan Samadkhan Sindhi and others**², it has been held that powers under Article 226 cannot be exercised to quash an FIR which made out prima facie commission of offence.
7. In **State of Andhra Pradesh Vs. Gourishetty Mahesh and others**³, the Supreme Court has reiterated the duty of the writ Court while considering prayer for quashment of criminal proceedings.

1 AIR 2010 SUPREME COURT 3762

2 (2010) 1 Supreme Court Cases 234

3 (2010) 11 Supreme Court Cases 226

8. In **Padal Venkata Rama Reddy alias Ramu Vs. Kovvuri Satyanarayana Reddy and others**⁴, it has been held that quashing of criminal proceedings under Article 226 of the Constitution or under Section 482 CrPC is permissible only if the complaint does not disclose any offence or the same is frivolous, vexatious or oppressive. It is held that the High Court cannot get into meticulous analysis of facts as to likelihood of acquittal or conviction.
9. In **C.P. Subhash Vs. Inspector of Police, Chennai and others**⁵, it has been held that the High Court in ordinary course should not invoke its powers to quash such proceedings except in rare and compelling circumstances.
10. In the case at hand, sanction against the petitioner was granted on 7.9.99 by a detailed order (Annexure-P/8). In the sanction order, it is mentioned that the medicines purchased by the petitioner were available on lesser rates in the Government agency namely, M.P. Laghu Udyog Nigam, Bhopal, but yet ignoring the Purchase Rules, they purchased medicines on inflated rates. Thus, *prima facie* case was found by the sanctioning authority for sending the petitioner for trial for the alleged offences.

4 (2011) 12 Supreme Court Cases 437

5 (2013) 11 Supreme Court Cases 559

11. True it is that closure report was submitted, however, by an order dated 16.11.2002, the Special Judge (PC Act) refused to accept the closure report and took cognizance in the matter on the basis of sanction granted by the State Government. The petitioner has not stated anything as to whether this order of the trial Court was assailed before this Court in any proceeding.
12. Be that as it may, the petitioner could have challenged that order before this Court, therefore, even if the said order has not been challenged, as on date, this petition having been preferred after 14 years from the said order, suffers from delay and laches.
13. For the foregoing, this Court does not find any substance in the writ petition, which deserves to be and is hereby dismissed. However, the trial Court is directed to expedite the trial and make all possible endeavour to conclude the same at the earliest.
14. A copy of this order be sent to the trial Court forthwith.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve