

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM No. M-18704 of 2016 (O&M)

Date of Decision: 12.02.2018

Naresh Kadian

... Petitioner

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Ravi Sharma, Advocate,
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

TEJINDER SINGH DHINDSA, J.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 29 dated 25.12.2009, under Sections 420, 120-B of IPC and Section 13 (1) of Prevention of Corruption Act, registered at Police Station SVB, Gurgaon and all proceedings emanating therefrom.

Counsel submits that petitioner at the relevant point of time was serving as District Khadi Gram Udyog Officer, Faridabad and has been falsely implicated with regard to certain purchase of Gas Chullas, Burners, Regulators in the year 2007 and which had been supplied by proprietor of National Enterprises, Narnaul upon demand having been raised by the District Elementary Education Officer, Gurgaon.

It is contended that from a bare perusal of the FIR, no offence has been attributed to the petitioner as he had only

performed his duty i.e. to forward the demand of the District Elementary Education Officer, Gurgaon to the registered Supplier with the Haryana Khadi and Village Industry Board and the Board in turn had got 5% service charge from the Supplier as per MOU signed between the Supplier and the Board and which was deposited by way of demand draft. No financial loss had been caused to the Board.

It is vehemently argued by the counsel that the petitioner has been deprived of his constitutional right to have a speedy investigation and trial, inasmuch as the FIR was registered in the year 2009 for an offence allegedly committed in the year 2007 and the charge sheet till date has not been filed.

Per contra learned State counsel would submit that offence under the provisions of the Prevention of Corruption Act has been cited and keeping in view the seriousness of the charge no intervention in the matter is called for.

Counsel for the parties have been heard at length.

Briefly noticed FIR has been registered on the allegations that in pursuance to a mid day scheme, Smt. Sarita Chaudhary the then District Elementary Education Officer, Gurgaon had purchased 416 Gas Chullas (Bhatti type) sets for her subordinate schools @ Rs.3170 per chulla through Khadi Gram Udyog Faridabad. Allegations are that the items purchased were not of ISI make and a price higher than the actual cost had been charged to the Government. The order for supply of material had been placed to Rattan Singh @ Billu, Supplier/proprietor of

National Enterprises, Narnaul. Allegations are that Rattan Singh in connivance with the present petitioner had supplied cheap and inferior quality of 416 Gas Chullas (Bhatti type), Burners, Regulators, Rubber Pipes etc. and have charged a price of Rs.3170/- per set. Such material was not of ISI make and upon inquiry from other vendors it was found that the price of one set was actually Rs.760/- plus 12.5 vat. In a nutshell embezzlement/fraud of Rs.10,25,630/- is stated to have been committed.

The conceded position before this Court is that even though the purchase in question pertain to the year 2007 and the FIR had been registered in the year 2009, investigation in the matter is still pending and the challan has not been presented.

The aspect as regards right to a speedy trial flowing from Article 21 of the Constitution of India was examined by the Apex Court in ***Pankaj Kumar Vs. State of Maharashtra and others*** 2008 (4) R.C.R. (Criminal) 890 and which was held as follows:-

“It is therefore, well settled that the right to speedy trial in all criminal prosecutions 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 persecutions 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, enumerated above, 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 for conclusion of trial.”

In the case of *Pritam Singh Vs. State of Punjab 2009 (1)*

R.C.R. (Criminal) 497 (P&H) the allegations against the said petitioner was of purchase of sub standard HDPC pipes causing loss to the State. FIR was lodged 07 years after retirement and the challan was presented 05 years thereafter. It was held by this Court that it is a violation of the right of speedy trial and accordingly petition seeking quashing of FIR was allowed.

Adverting to the facts of the present case, petitioner stands voluntarily retired on 07.08.2014. There has been substantial delay in the matter. The supplier i.e. National Enterprises was duly registered with the Haryana Khadi and Village Industries Board. It was the demand of the District Elementary Education Officer, Gurgaon for purchase of Chulla that had been forwarded by the petitioner to the registered Supplier. This Court finds substantial merit in the contention raised by

counsel for the petitioner that the supply of the required material had to be to the satisfaction of the Purchase Department in terms of agreement dated 28.10.2006 (Annexure P-2) entered into between the Supplier and the Board. In the present case concerned officer of the purchase department i.e. District Elementary Education Officer, Gurgaon did not raise any complaint regarding sub standard material and the same not being of ISI standard.

Connivance in the present case if any can be inferred between the officials of the purchase department and the supplier.

The categoric averments made by the petitioner in para 9 of the petition is that the total amount that was alleged to have been embezzled stands recovered from Smt. Sarita Chaudhary i.e. the then Elementary Education Officer, Gurgaon vide order dated 05.08.2011 and that too after conducting a regular inquiry. Such averments stand admitted in the reply filed on behalf of the State and placed on record.

In view of the above and by following the dictum laid down by the Apex Court in ***Pankaj Kumar's case (supra)*** as regards the gross delay that has occurred during the course of investigation and which till date has not been finalized, this Court is of the considered view that continuation of the prosecution against the petitioner who has since retired would be nothing but an abuse of process of law.

Consequently, the present petition is allowed.

Impugned FIR No.29 dated 25.12.2009, under Sections 420, 120-B of IPC and Section 13 (1) of Prevention of Corruption

Act, registered at Police Station SVB, Gurgaon and all proceedings emanating therefrom qua the petitioner are quashed.

Disposed of.

12.02.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No