

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

CRM-M-31327-2013 (O&M)

Date of Decision:19.04.2018

Brij Bhushan Kaushik

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Petitioner in person.

Mr. Deepak K. Grewal, DAG, Haryana.

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TEJINDER SINGH DHINDSA, J.

Instant petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.4, dated 12.04.1997, under Sections 420/468/471/120-B IPC and Section 13(1) of the Prevention of Corruption Act, registered at Police Station State Vigilance Bureau, Hisar, District Hisar and all proceedings emanating therefrom.

Petitioner, who appears in person submits that it is a case of false implication and the allegations of the petitioner being in connivance with other co-accused and having allotted plots in Auto Market, Sirsa by misuse/abuse of power and for personal gain are totally baseless. It has been contended that petitioner was Sub Divisional Magistrate, Sirsa from 25.07.1991 to 06.10.1994 and was having additional charge of Administrator, Municipal Council, Sirsa from 19.03.1994 to 06.10.1994. The then Executive Officer, District Town Planner, Secretary and other officials

of Municipal Council, Sirsa had put up an official note in a routine manner on 28.03.1994 carrying a proposal to allot vacant plots of Auto Market, Sirsa to new members of the Automobile Association. The petitioner, while holding the charge of Administrator had approved the official note in a routine manner and in good faith as Municipal Council, Sirsa was to be financially benefited by allotment of the vacant plots. It is urged that under such circumstances petitioner should not be criminally prosecuted.

Petitioner argues that he has been deprived of his constitutional right to have a speedy investigation and trial inasmuch as the impugned FIR was registered in the year 1997 pertaining to certain allotments made in the year 1994 and the charge sheet has been filed in the year 2016 i.e. after an inordinate delay of about 20 years. It is vehemently argued that under such circumstances, delay would be fatal and the criminal proceedings in relation to the impugned FIR dated 12.04.1997 cannot sustain.

Yet another submission advanced by petitioner is that the complainants in this case, namely, Sh. Hazara Ram and Dr. Mangat Rai Gagneja had filed in this Court **CWP No.5214 of 1997** titled as **Hazara Ram & others Vs. State of Haryana & others** and in which also the issue pertained to wrong allotment of costly plots to ineligible persons in Auto Market, Sirsa and such writ petition was dismissed by this Court in the light of order dated 01.05.2010. It is the submission advanced by petitioner, appearing in person, that the writ petition had been dismissed by this Court after examining all the aspects and having verified from the Municipal Council records relating to allotment of plots in the Auto Market, Sirsa. Contended that consequent to dismissal of the writ petition in which issue

was of wrong allotment of plots in Auto Market, Sirsa, criminal prosecution on identical charges cannot be permitted to continue as it would amount to abuse of the process of law.

Per contra, learned State counsel submits that the delay in submission of the final investigation report/challan was not attributable to the Investigating Agency and such delay stands fully explained as per contents of the additional affidavit dated 08.09.2017 of the Deputy Superintendent of Police, State Vigilance Bureau, Hisar and which was placed on record. That apart, learned State counsel submitted that offence punishable under the Prevention of Corruption Act, 1988 has been committed by the petitioner and under such circumstances, it would not be a fit case to exercise powers under Section 482 Cr.P.C. and for quashing of the impugned FIR.

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that no interference in the case is warranted.

It is by now well settled that right to a speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution of India. Such right is applicable not only to the actual proceedings in Court but would also include within its sweep the preceding police investigations as well. The right to a speedy trial extends equally to all criminal prosecutions and would not confine to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, this Court would be obligated to perform a balancing act by taking into consideration the attendant circumstances and then to come to a conclusion whether the right to speedy trial has been denied in a given case. In case, Court comes to

a conclusion that the right to a speedy trial to an accused has been infringed, the charges or the conviction as the case may be would be open to be quashed but to the contrary if the Court feels that having regard to the nature of offence and other attendant and relevant circumstances, quashing of proceedings may not be in the interest of justice then in such a situation it would be open to the Court to make an appropriate order as deemed just and equitable including fixation of time for conclusion of trial. A reference in this regard may be made to the decision of the Apex Court in **Pankaj Kumar Vs. State of Maharashtra & others, 2008 (4) RCR (Criminal) 890.**

Even the issue of delay in the investigation of criminal proceedings, whether by itself would serve as a sufficient ground for quashing the proceedings in pursuance to the registration of the case, notwithstanding whatever may be the reasons for delay has come up for consideration in a number of cases. It has been held that if investigation of a criminal proceeding carries on with a tardy pace due to inefficiency of the Investigating Agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused then it would be open for the Courts to step in and to resort to the drastic remedy of quashing further proceedings in such investigation. However, it would not be possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed. A number of factors would have to be taken into account i.e. whether the delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused.

The scope and ambit of powers of High Court under Section 482 Cr.P.C. has also been examined by the Apex Court in a number of decisions and it has been clearly held that even though the powers possessed by the High Court are very wide but the same should be exercised in appropriate cases to impart real and substantial justice. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and where the Court is convinced on the basis of material on record that allowing the proceedings to continue would be an abuse of the process of Court or that the ends of justice require that the proceedings ought to be quashed.

Adverting back to the facts of the instant case and upon perusal of the challan document that was submitted in the month of August 2016, it would be discernible that the Secretary and Commissioner, Local Bodies, Haryana had given approval in the year 1987 for the construction of an Auto-cum-Commercial Market in Sirsa. As per condition No.1 of the approval, 703 plots were to be allotted on 'no profit no loss' basis to the persons who were eligible. Eligibility was defined in condition No.2 of the approval i.e. the plots were to be allotted to such people, who had been earlier working in Auto or Auto related shops in Sirsa and an undertaking was to be taken from such allottees that after getting allotment of plot/s in the New Auto Market they would have to shift their shops/trades from the city and would henceforth continue further operations from the newly allotted plots in the Auto Market. Condition No.4 in the approval granted by the State Government contemplated that after allotment of 703 plots on 'no profit no loss' basis, the remaining 279 plots were to be sold through an open auction.

The challan document reveals that the petitioner, who was the then Sub Divisional Magistrate, Sirsa and having additional charge of Administrator, Municipal Council, Sirsa in connivance with other officials of the Municipal Council, Sirsa had made allotments to ineligible persons even as regards the plots which were otherwise to be allotted by way of auction. The names of certain ineligible persons also stand reflected in the challan document.

The challan document prima facie discloses commission of offence by the petitioner. This Court would desist from entering into the merits of the case and the manner and method in which the petitioner while holding the charge of Administrator, Municipal Council, Sirsa had approved an official note put up by the other co-accused/officials of Municipal Council, Sirsa and thereby allotting plots in Auto Market, Sirsa and thereby having deviated from the procedure of allotments i.e. by way of auction. These are matters to be considered and dealt with during the course of trial on the basis of evidence duly led. Charges are serious in nature and based primarily on documentary evidence.

Undoubtedly, there has been substantial delay in filing the challan document. FIR was registered in the year 1997. Challan came to be filed in the year 2016. Even sanction to prosecute the petitioner was granted in the year 2016. To examine the issue of delay, this Court on a previous date of hearing i.e. on 18.08.2017 had passed the following order:

“The grievance of the petitioner is that in respect of incident on March 1994, FIR was lodged in the year 1997 and admittedly, as learned State counsel submits that the investigation was completed in 2016 and the challan came to be filed on 15.09.2016 in the trial Court. Thus, the period of over two decades was taken by the investigating agency for filing of

charge-sheet.

Petitioner submits that this is violative of concept of speedy trial and therefore, the petitioner would be entitled to discharge.

Per contra, learned State counsel submits that mere delay in completing the investigation and filing of challan would not be the ground to quash the FIR. However, I find that it is necessary to have explanation from the State as to why the period over two decades was spent for filing challan. The issue can be decided only thereafter, since this Court will have to find out whether the concept of speedy trial is really taken care of or not by the prosecution.

List again on 18.09.2017 to enable the State to file comprehensive affidavit explaining the delay as aforesaid.”

In compliance of the order dated 18.08.2017 passed by this Court, an additional affidavit dated 08.09.2017 of the Deputy Superintendent of Police, State Vigilance Bureau, Hisar was filed and placed on record. Perusal of the same would reveal that after registration of the case, the Investigating Officer approached Municipal Council, Sirsa for the record pertaining to allotment of plots and recorded statement of Sh. Suresh Chand, Clerk in Municipal Council, Sirsa under Section 161 Cr.P.C. and who stated that the entire record pertaining to allotment of plots had been sent to the office of Advocate General, Haryana on account of filing of **CWP-5214-1997 (Hazara Ram & others Vs. State of Haryana)**. The Superintendent of Police, State Vigilance Bureau, Hisar vide letter dated 17.10.2002 addressed to Advocate General, Haryana called for providing the record to the Investigating Officer but no record was provided. Thereafter, Superintendent of Police, State Vigilance Bureau, Hisar addressed Memo dated 18.10.2005

and 05.02.2007 to Advocate General, Haryana for providing the record. Office of Advocate General, Haryana responded vide report dated 06.02.2007 to the effect that for purposes of procuring record, Registrar of Punjab & Haryana High Court at Chandigarh be contacted. As per additional affidavit, Superintendent of Police, State Vigilance Bureau, Hisar then addressed communication dated 18.10.2009 to the Registrar of this court for providing the record to the Investigating Officer but no record was provided.

CWP-5214-1997 (Hazara Ram & others Vs. State of Haryana) was dismissed vide order dated 15.10.2010. After dismissal of the writ petition, the Investigating Officer issued repeated memos dated 02.06.2011, 12.12.2011, 05.02.2012, 02.08.2012, 20.11.2012, 19.12.2012, 10.01.2013, 25.01.2013, 01.04.2013, 17.04.2013, 05.05.2013 and 05.06.2013 to the Executive Officer, Municipal Council, Sirsa for providing the records but still no record was provided. Faced with a situation, Director General, State Vigilance Bureau, Panchkula addressed Memo dated 10.05.2013, requesting the Chief Secretary, Vigilance Department, Haryana to issue directions to the concerned for providing relevant records pertaining to the case. Thereupon, the Chief Secretary, Vigilance Department, Chandigarh requested the Principal Secretary, Local Bodies Department, State of Haryana vide Memo dated 06.06.2013 to provide the record to the Investigating Officer with immediate effect. In spite thereof, record was not made available to the Investigating Agency. Ultimately, the Executive Officer, Municipal Council, Sirsa lodged a complaint in Police Station City Sirsa upon which a case bearing FIR No.704, dated 12.09.2013, under Sections 204/477-A IPC was registered. It is consequent to registration of the case that office of Advocate

General, Haryana vide Memo dated 25.11.2013 informed the Deputy Commissioner, Sirsa to collect the record pertaining to allotment of plots in Auto Market, Sirsa. Accordingly, Sh. Arvind Kumar, Assistant, Municipal Committee, Sirsa collected the records from the office of Advocate General, Haryana on 10.12.2013. It has been clarified in the additional affidavit dated 08.09.2017 placed on record that investigation thereafter gathered pace and the whole record of allotment was put to scrutiny and all the allottees were questioned and ultimately challan was submitted in the Court on 05.09.2016.

The factual premise noticed herein above and as disclosed in the additional affidavit dated 08.09.2017 of the Deputy Superintendent of Police, State Vigilance Bureau, Sirsa Range Hisar office, provides sufficient and plausible explanation as regards the delay in filing the challan document. It is not a case where delay can be attributed to the Investigating Agency and with an oblique motive to cause any prejudice to the accused/petitioner herein. In the light of peculiar facts and circumstances noticed herein above, the delay in filing the challan document would not be construed as fatal to the criminal prosecution launched.

The submission advanced by the petitioner as regards CWP-5214-1997 having been dismissed and the High Court having examined the entire aspect as regards the wrong allotment of plots in Auto Market, Sirsa is not well founded. Suffice it to observe that CWP-5214-1997 was dismissed as withdrawn as per prayer and request made by counsel representing the petitioner/s. At no point of time, this Court while exercising the extraordinary writ jurisdiction has returned a finding on merits with regard to allotment of plots in Auto Market, Sirsa and which form the bedrock of

allegations in the impugned FIR.

For the reasons recorded above and having regard to the nature of offence, prayer in the instant petition for quashing of the impugned FIR is declined. However, keeping in view the factual premise that the FIR had been registered in the year 1997 and the challan document having been furnished in the year 2016 and the sanction to prosecute having also been granted in the year 2016 itself, directions are issued to the trial Court to expedite the trial proceedings and take up the same on a priority basis and to conclude the same within a period of six months from the date of passing of this order.

Petition is dismissed.

It is, however, clarified that this Court has not examined the allegations on merits and nothing contained in this order would be taken as an expression of opinion on the merits of the case.

19.04.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |