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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23.09.2019

+ **CRL.M.C. 2074/2019 with CRL.M.A. 8249/2019 (Stay)**
and CRL.M.A. 32349/2019(Stay)

HARBAKSH SINGH ROSHA Petitioner
Through: Mr. Adit S. Pujari and Ms. Tusharika
Mattoo, Advs.
versus

STATE Respondent
Through: Mr. Izhar Ahmed, APP for State with
SI Sunil Kumar, PS – Tilak Marg
Mr. Raj Kamal, DAG Punjab with
Mr. Sunil Kumar, SDE, Water Supply
& Sanitation Deptt., Punjab/ de facto
complainant

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby quashing the Charge sheet in Case arising out of FIR No. 536/1991 registered under Section 409 IPC, and all proceedings emanating therefrom pending before the Court of learned Metropolitan Magistrate-06, New Delhi District, Patiala House Courts, Delhi.

2. Brief facts of the case are that on 25.11.1970, the Petitioner came to

be employed by the Public Health Works (now Department of Water Supply and Sanitation), Government of Punjab (respondent herein) at the Post of Sectional Officer (now Junior Engineer) in the Public Health Works, Government of Punjab at Gurdaspur, Punjab.

3. In August 1978, the Petitioner was transferred from Patiala to Nabha House, Delhi.

4. On 12.11.1990, Junior Engineers across various departments of Punjab went on strike for certain demands concerning the interests of the workers. Such strike came to be called off on 15.03.1991.

5. On 15.03.1991 upon calling off the strike, the Petitioner approached the various officials posted at Nabha House, Delhi, with the joining report. However, such officials refused to accept the same. The petitioner was not allowed to rejoin the post at which he was deployed prior to the strike.

6. Further case of the petitioner is that on 21.05.1991, as the Petitioner was unable to rejoin his post at Delhi, the Petitioner approached various officials of the respondent with his joining report. Such officials also refused to accept the same.

7. On 09.10.1991, the FIR No.536/1991 came to be registered against the petitioner under Section 409 IPC at Police Station - Tilak Marg on the

basis of certain allegations that Petitioner had misappropriated certain properties of the Nabha House, Delhi.

8. Thereafter, the departmental inquiries were also initiated against the petitioner and a charge-sheet came to be served upon the petitioner under Rule 8 of the Punjab Civil Services (Conviction & Appeal) Rules, 1970 with the same allegations, which also did not culminate into any findings against the Petitioner.

9. On 20.02.1992 a charge-sheet came to be filed against the Petitioner in the impugned FIR under Section 409 IPC and Section 299 Cr.P.C. However, on 01.12.1998, by way of order of the Governor of Punjab, the department dropped the charge-sheet under Rule 8 of the Punjab Civil Services (Conviction & Appeal) Rules, 1970.

10. On 11.12.2007, the Petitioner was arrested and remained in custody for a period of over 90 days.

11. On 15.05.2009, a supplementary chargesheet came to be filed.

12. Learned counsel for the petitioner submits that the petitioner has been facing trial for the last 25 years. However, no witness has appeared before the Court of the learned Metropolitan Magistrate, Patiala House Courts, New Delhi.

13. On 18.09.2018, the Superintendent (Head of the Department), issued a letter with the subject "*Notice for Exploring the Possibility of Compromise*" to the Legal Advisor, indicating that certain facts be placed before the Ld. Metropolitan Magistrate on the next date of hearing i.e. on 03.10.2018 and that they did not wish to pursue the complaint pending before the Court at their end. Such letter further indicated that service of the petitioner had been terminated and the charge-sheet pending against him (under Rule 8, Punjab Civil Services (Conviction & Appeal) Rules, 1970) has also been dropped.

14. Accordingly, the Law officer Mr.APS Luna, has appeared before the learned Trial Court with a proposal of settlement.

15. Learned counsel further submits that the petitioner has been facing criminal proceedings for over 25 years and now, he is over 70 years of age and suffering from several ailments including 100% loss of sight and partial loss of hearing. Thus, the proceedings may be dropped in the light of ***Gian Singh vs. State of Punjab & Ors.: [2012] 8 SCR 753.***

16. On the other hand, learned counsel appearing on behalf of the department has not disputed the fact that the petitioner had been terminated, departmental proceedings have been dropped and till date, only one witness

has been examined out of 18 witnesses.

17. Learned counsel has also not disputed that after framing of charge, the prosecution witnesses have not come forward for deposition.

18. However, a note is produced by the learned counsel signed by OSD (Litigation) dated 23.09.2019, whereby stated that the facts of the case shall not be taken as that the department does not intend to pursue the matter.

19. In addition, learned counsel has fairly not disputed aforesaid facts and submits that it is upto the Court to take a final decision.

20. Fact remains that the case is pending against the petitioner since 1991 and we are going to enter the year 2020, thus this case had attained the age of 29 years and till date only one witness has been examined.

21. In ***Pankaj Kumar vs. State of Maharashtra & Ors., MANU/SC/7818/2008***, it was held that

“17. It is, therefore, well settled that the right to speedy trial in all criminal persecutions 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.

18. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear. Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the court of Special Judge, Latur, deserve to be quashed on this short ground alone.

22. Keeping in view the fact that the FIR is of the year 1991 and till date only one witness is examined and the petitioner has crossed the age of 70 years with several ailments and 100% loss of sight, in the interest of justice, this Court is inclined to quash the FIR as no useful purpose would be served to keep the trial pending which may take, with the same speed, another 5-10 years. Moreover, the petitioner had been terminated in other case and departmental proceedings against the petitioner have also been dropped.

23. For the reasons afore-recorded, the FIR No. 536/1991 registered at P.S. Tilak Marg and all proceedings emanating therefrom are hereby quashed.

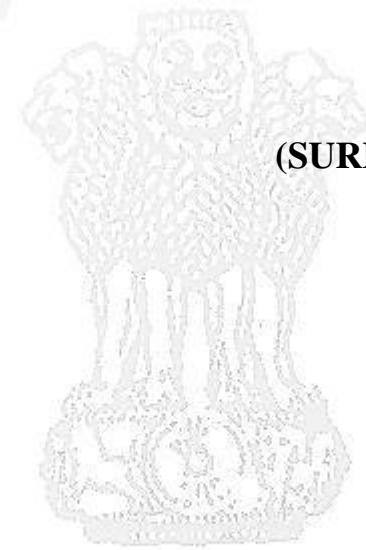
24. The petition is allowed accordingly with no orders as to costs. Pending applications also stand disposed of.

25. Order *dasti*, under the signature of Court Master.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 23, 2019

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