

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 201 OF 2019**

Mr. Ravinder Chohan, aged 46 years, s/o Mr. Prem Singh Chohan, R/o Birmingham, United Kingdom, represented herein by his duly constituted Power of Attorney holder, Mr. Prasad Arolkar, aged 31 years, Indian National, r/o House No. 922/19 Socorro, Porvorim, Bardez-Goa.

.... Petitioner

Versus

1. State of Goa, Through the Public Prosecutor, High Court of Bombay at Goa.
2. Peter D'Cunha, Partner M/s RPC Builders and Developers, office at Alzira Apartments, Shop No. 5, Gate No. 4, Nehru Stadium, Fatorda, Margao, Goa.
3. Mr. Tom Ronaldo Rego, Partner M/s RPC Builders and Developers, office at Alzira Apartments, Shop No. 5, Gate No. 4, Nehru Stadium, Fatorda, Margao, Goa.
4. Mr. Clifford Dias, Partner M/s RPC Builders and Developers, office at Alzira Apartments, Shop No. 5, Gate No. 4, Nehru Stadium, Fatorda, Margao, Goa.
5. Mr. Ramkuar B. Agarwal, Director, M/s Mojov Enterprises Pvt. Ltd., having its office at 100/101, RBM Road, Le Meridien, Pune 411 001.

.... Respondents

Mr. Yogesh V. Nadkarni with Mr. Sanket Kamat, Advocates for the Petitioner.

Mr. Gaurish Nagvenkar, Additional Public Prosecutor for Respondent No. 1.

Mr. Ajit Kantak with Mr. Raunak Kantak, Advocates for Respondent No. 5.

Coram:- M.S. SONAK &
SMT. M.S. JAWALKAR, JJ.

Date:- 22nd January 2020

ORAL JUDGMENT: (Per M. S. Sonak, J.)

Heard Mr. Nadkarni with Mr. Sanket Kamat, the learned Counsel for the petitioner, Mr. Nagvenkar, the learned Additional Public Prosecutor for respondent no. 1 and Mr. Ajit Kantak with Mr. Raunak Kantak, the learned Counsel for respondent no. 5.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. The petitioner, in the present case, is said to be suffering from Nasopharyngeal cancer and he last completed a course of radical dose concurrent chemoradiotherapy in March, 2019, under the care of Dr. Andrew Hartley, Consultant Clinical Oncologist at the Queen Elizabeth Hospital at Birmingham.

4. On 21.02.2015, the petitioner lodged a complaint before the Police Inspector, Quellossim, Verna, Goa, alleging that the respondent nos. 2 to 5 have committed offences under Section 406, 384, 420, 506(ii), 120-B read with Section 34 of IPC. FIR No. 37/15 was registered in Verna Police Station on 24.04.2015. Chargesheet was filed in the Court of the Judicial Magistrate First Class (JMFC), Vasco-da-Gama on 16.03.2016, which was registered as Criminal Case No. 26/S/2016/B. Charges were framed against the respondent nos. 2 to 5 by order dated 10.12.2018, under Sections 406, 384, 420, 506(ii), 120-B read with Section 34 of IPC.

5. As against the order framing charge, some of the respondents, instituted Criminal Revision Application Nos. 82/2018 and 6/2019, before the learned Sessions Court at Margao, wherein on 03.01.2019, the learned Sessions Judge called for records and proceedings in Criminal Case No. 26/S/2016/B, pending before the JMFC, Vasco-da-Gama. Although, there is no stay as such, granted by the learned Sessions Judge at Margao, on the proceedings before the

JMFC, Vasco-da-Gama, the calling of records and proceedings has virtually resulted in the stay of the proceedings. As such, the trial before the JMFC, Vasco-da-Gama is unable to proceed for want of records and proceedings before it. In effect, from January, 2019 onwards, there is a stay or in any case, there is no progress before the JMFC, Vasco-da-Gama in Criminal Case No. 26/S/2016/B.

6. In the aforesaid circumstances, the petitioner has applied for the following substantive reliefs:

A) For an appropriate Writ/Order thereby directing the Ld. Judicial Magistrate First Class at Vasco Da Gama, South Goa to expedite and conclude the trial of case bearing Criminal Case No.26/S/2016/B, in a fixed time frame as deemed fit by this Hon'ble Court.

B) For an appropriate Writ/Order thereby directing the Court of District Judge-2 & Additional Judge, Margao, to expedite and dispose of the Revision Application bearing Case No: CRRA/82/2018 within such time as deemed fit by this Hon'ble Court.

C) For an appropriate Writ/Order thereby directing the Court of District Judge-1 & Additional Judge, Margao, to expedite and dispose Revision Application bearing Case No: CRRA/6/2019 within such time as deemed fit by this Hon'ble Court.

7. Mr. Kantak, the learned Counsel for the respondent no. 5, at the outset, submitted that there is a case pending against the petitioner, being Criminal Complaint No. 3530/15 before the JMFC at Pune, on the basis of a complaint of the Company, of which, the respondent no. 5 is a Director. Mr. Kantak, pointed out that since, the petitioner failed to attend the proceedings before the JMFC at Pune, not only non bailable warrants were issued to secure his presence, but, further, even proclamation has been issued declaring the petitioner as an absconder.

8. Mr. Kantak, the learned Counsel submits that since, the petitioner is not interested in abiding by the legal process, the extraordinary jurisdiction under Article 226 or 227 of the Constitution of

India ought not to have been invoked. In any case, he submits that the Criminal Revision Applications before the learned Sessions Judge are posted for final arguments on 27.01.2020 and therefore, no orders for expeditious disposal of criminal proceedings before the JMFC at Vasco-da-Gama, may be passed.

9. By way of rejoinder, Mr. Nadkarni, the learned Counsel for the petitioner pointed out that the petitioner was not aware of the proceedings before the JMFC, Pune and the petitioner acquired knowledge of the same only when the affidavit was filed in the present matter. He pointed out that on 23.11.2019, applications have been filed on behalf of the petitioner for recall of proclamation and cancellation of non bailable warrants. These applications are pending before the JMFC at Pune.

10. According to us, now that the petitioner has already filed applications for recall of proclamation and for cancellation of non bailable warrants, it cannot be said that the petitioner is refusing to

abide by the judicial processes. There is no reason to believe that the JMFC at Pune will not decide the applications made by the petitioner in accordance with law and on their own merits. However, in these set of facts, the petitioner cannot be non-suited on the basis of preliminary objection raised by Mr. Kantak, the learned Counsel for the respondent no. 5.

11 In the context of the substantive reliefs made by the petitioner, reference is required to be made to the decision of the Apex Court in the case of **Asian Resurfacing of Road Agency Private Limited & Another Vs. Central Bureau of Investigation (2018) 16 SCC 299**, in the context of stay on proceedings before the Trial Court operating for unreasonable lengths of time. In para 36 and 37, this is what is the Hon'ble Supreme Court has observed:

35. In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At

times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution.

However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal

appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

12. In the same matter, the Hon'ble Supreme Court has dealt with the position where no stay may actually have been granted, but, proceedings before the Trial Court cannot proceed on account of calling of records and proceedings by the Appellate or Revisional Courts. In this context, the Hon'ble Apex Court on 25.04.2018 made the following order, which is reported as a connected order in **(2018) (16) SCC 340**:

- 1. Heard learned counsel for the parties.*
- 2. In view of the judgment of the three-Judge Bench dated 28-3- 2018 and after considering the material on record, we do not find any ground to interfere with the order framing charge. Accordingly, the trial court is directed to proceed with the matter pending before it. All contentions of the parties are left open which may be gone into by the trial court. Parties are directed to appear*

before the trial court on 14-5-2018.

3. To give effect to the directions in judgment of this Court dated 28-3-2018, noted above, we direct that wherever original record has been summoned by an appellate/Revisional Court, photocopy/scanned copy of the same may be kept for its reference and original returned to the trial courts forthwith.

4. We also direct that if in future the trial court record is summoned, the trial courts may send photocopy/scanned copy of the record and retain the original so that the proceedings are not held up. In cases where specifically original record is required by holding that photocopy will not serve the purpose, the appellate/Revisional Court may call for the record only for perusal and the same be returned while keeping a photocopy/scanned copy of the same.

5. A copy of this order be sent to all the High Courts. The appeals are disposed of.

13. In the present case as well, there is no stay as such, granted by the Revisional Court in the Revision Petitions, instituted by respondent nos. 2 to 5. However, on account of orders for calling of records and proceedings, the trial in Criminal Case No. 26/S/2016/B

before the JMFC, Vasco-da-Gama is unable to proceed. To such a situation, the observations made by the Hon'ble Apex Court in **Asian Resurfacing of Road Agency Private Limited** (supra) apply.

14. Accordingly, the learned Sessions Judge at Margao is directed to permit the respondent nos. 2 to 5 to forthwith take and place on record the photocopies of all records and proceedings in Criminal Case No. 26/S/2016/B, so that the Criminal Revision Application Nos. 82/2018 and 6/2019 can be disposed off on the basis thereof. The learned Sessions Judge at Margao is directed to return the records and proceedings to the Court of JMFC at Vasco-da-Gama, as early as possible and in any case, within a period of one week from today so that the trial in Criminal Case No. 26/S/2016/B before the JMFC at Vasco-da-Gama can proceed in accordance with law. In case, there is any delay on the part of the respondent nos. 2 to 5, the learned Sessions Judge is requested to retain the photocopies of the records and proceedings and return the originals to the Court of JMFC, Vasco-da-Gama. In such a situation, the learned Sessions Judge to direct and

ensure recovery of charges from the respondent nos. 2 to 5.

15. The learned Sessions Judge at Margao is directed to dispose off Criminal Revisions Application Nos. 82/2016 and 6/2019 as expeditiously as possible and in any case on or before 29.02.2020. This is easily possible, since, the learned Counsel for the parties state that the matters are placed for final hearing on 27.01.2020.

16. Since, there is no stay to the proceedings before the JMFC at Vasco-da-Gama, the proceedings in Criminal Case No. 26/S/2016/B are expedited and directions are issued to JMFC, Vasco-da-Gama to dispose off the same as expeditiously as possible and in any case, within a period of six months from today. This shall be, no doubt, subject to orders of the learned Sessions Judge that may be made in the pending Revision Applications.

17. Respondent nos. 2 to 5 should not seek unnecessary adjournment before the JMFC at Vasco-da-Gama and create an

impression that they are out to delay the proceedings. Needless to say that the petitioner should also not drag the proceedings before the JMFC at Vasco-da-Gama, since, it is at the behest of the petitioner that the orders of expedition have been made.

18. Rule in this Petition is made absolute in the aforesaid terms. There shall be no order as to costs.

19. All concerned to act on the basis of an authenticated copy of this Order.

20. The petitioner is at liberty to place authenticated copy of this Order before the learned Sessions Judge at Margao, so that there is no unnecessary delay in this matter.

SMT. M.S. JAWALKAR, J.

M. S. SONAK, J.