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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2021

PRONOUNCED ON : 24.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.28796 of 2015
and Crl.M.P.Nos.1 & 2 of 2015

S.S.Govindarajan .. Petitioner / 33rd Accused
Vs.

State represented by
The Inspector of Police,
Central Crime Branch,
Chennai City, Chennai.

.. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.1067 of 1999 on the file of the learned Chief Metropolitan Magistrate Egmore, Chennai and to quash the same.

For Petitioner .. Mr.V.Krishnamoorthy
For Respondent .. Mr.E.Raj Thilak
Govt. Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., by petitioner / A33 in C.C.No.1067 of 1999 now pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, to quash the said calendar case as against the petitioner herein. A final report had been filed for offence under Section 120 (b) IPC read with Sections 420, 409 IPC read with 34 IPC in the year 1999.

2.It is complained by the petitioner herein that charges have not been framed by the Trial Court since 1999. It is also stated that the calendar case has been pending without any effective progress. The petitioner claimed that the Constitution Bench of the Hon'ble Supreme Court in P.Ramachandra Rao Vs. State of Karnataka reported in 2002 SCC (Cri) 830 had held that



speedy trial is a right of every accused and if there is unwarranted delay it would be violation of Article 21 of the Constitution of India and such trial proceedings can be terminated. The petitioner also stated that he had resigned from the post of Director of Anubhav Agro Housing Developers / one of Anubhav Group of Companies as on 16.09.1996. It is claimed that he was also acquitted by the Additional Chief Metropolitan Magistrate, E.O.I Egmore, Chennai on 19.11.2010 in another case arising out of Companies Act, 1956. It is also claimed that no criminal liability can be fastened on the petitioner. It had therefore been stated that further proceedings in C.C.No.1067 of 1999 pending on the file of the learned Chief Metropolitan Magistrate Egmore, Chennai, should be quashed insofar as the present petitioner is concerned.

3.A counter had been filed by the Investigating Officer. It had been stated in the counter that Crime No.1431 of 1998 was registered under Sections 120(B), 409, 420 IPC read with 34 IPC and trial is pending in C.C.No.1067 of 1999. The petitioner had been arrayed as A33 in the final report. Subsequently further investigation had been conducted and additional police report was filed and the petitioner was then arrayed as A16. Thereafter, due to death and discharge of some of the accused, the petitioner came to be arrayed as A12.

4.It had been stated that 10 registered companies and 366 partnership firms had been incorporated and formed throughout India in the name of Anubhav Groups of Companies with 85 branches. It had been stated that the petitioner and other accused, describing themselves as promoters of teak plantation / orchards farms and resorts published advertisements in the newspapers guaranteeing teak timber at the end of twenty years, and further offering attractive dividends for fixed deposits and collected substantial sums of money from the public and thereafter had misappropriated the same.

5. It had been very specifically stated that the petitioner was one of the Directors of Anubhav Plantations Limited from 14.10.1995 to 07.02.1997. It had been further stated that the petitioner was also responsible for the misappropriation of the amount collected from the public. It had been further stated that the statements recorded from two witnesses namely, Jeyakumar, Assistant Registrar of Companies, Chennai and Nirmala Krishnamurthy, Assistant Inspection Officer, Office of the Regional Director of Inspection and Investigation, Department of Company Affairs, Shastri Bhavan, Nungambakkam, Chennai, also revealed that the petitioner was one of the Directors of the company and was involved with the transactions complained of. It had been further stated that the accused persons had resorted to filing various petitions before the Trial Court and High Court. There were also death of eight accused. There were also NWBs



pending against three accused. Moreover, three accused had also been discharged from the charges. One of the accused is in abroad. Two of the accused have obtained orders to dispense with personal appearance. The present petitioner was also filing petitions under Section 317 Cr.P.C., through his counsel before the Trial Court from 28.06.2012. It had also been stated that the Official Liquidator is in the process of making payment to the depositors of the Anubhav Group. It had been stated that the petitioner was also responsible for the administration of the company and for misappropriation of the amounts collected from the public. It had therefore been stated that the present Criminal Original Petition should be dismissed.

6. Heard arguments advanced by Mr.V.Krishnamoorthy, learned counsel for the petitioner and Mr.E.Raj Thilak, learned Government Advocate (Criminal Side) for the respondent.

7. It is the grievance of Mr.V.Krishnamoorthy, learned counsel for the petitioner that the final report in C.C.No.1067 of 1999 had been filed in the year 1999 and as on date even charges have not been framed. The learned counsel pointed out that in a connected criminal proceedings, wherein the Registrar of Companies was Prosecuting Agency and the petitioner had been arrayed as A8 in E.O.C.C.No.21 of 2010, by judgment dated 19.11.2010 the learned Additional Chief Metropolitan Magistrate / E.O.1, Egmore, had acquitted the petitioner herein on all charges, primarily holding as a fact that "as far as A8 is concerned he has resigned from the directorship on 16.09.1996 itself and he is not the officer in default for the said violation, for name sake he was called as Director."

8. The learned counsel pointed out that the allegations are the same in the instant case also and since a specific finding had been given that the petitioner was called director only for name sake, forcing the petitioner to face criminal trial for an endless period of years would be a violation of the right guaranteed under Article 21 of the Constitution of India.

9. In this connection, the learned counsel also relied on a judgment of the Constitution Bench of the Hon'ble Supreme Court in P.Ramachandra Rao Vs. State of Karnataka reported in 2002 SCC (Cri) 830, wherein, it had been held as follows:

"28. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . In Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] the Constitution Bench while



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recognising the principle that the denial of an accused's right of speedy trial may result in a decision to dismiss the indictment or in reversing of a conviction, went on to state:

"92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay." (SCC pp. 639-40, para 92)"

10.The learned counsel therefore stated that further proceedings in C.C.No.1067 of 1999 should be quashed insofar as the petitioner is concerned. The learned counsel pointed out that for the past 22 years there has been no progress at all in the case. Even charges have not been framed.

11.I have carefully considered the arguments and examined the records in the case.

12.It is a fact that C.C.No.1067 of 1999 is pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai for the past nearly 22 years. The petitioner herein has been arrayed as A12. The total number of accused now arrayed before the Trial Court are Twenty Four. Eight accused have died. Three accused had been discharged from charges. NBWs are pending against A13, A14 and A18. One of the accused A21 is in abroad. Among the accused, A9 and A17 have obtained orders dispensing with their personal appearance. Only A1, A2, A3, A4, A8 and A12 (petitioner) and A15 are physically appearing before the Court and even they are filing petitions under Section 317 Cr.P.C., from 28.06.2012.

13.There are statements recorded indicating that the petitioner was also a Director between 14.10.1995 and 07.02.1997 of the company involved in the offences. It is stated that the petitioner was involved with the first scheme of plantation. Whether in that period, the petitioner had been directly



involved in the offence charged or not is a matter of evidence which can be determined only after trial. The petitioner cannot take advantage of the fact that he had been acquitted in E.O.C.C.No.21 of 2010. That prosecution had been lodged by the Registrar of Companies, Chennai for violation of Section 295 punishable under Section 295(4) of the Companies Act, 1956.

14.The present prosecution is for a wider range of offences and it is seen that it involves 2077 depositors who claim that a sum of Rs.42,48,81,169/- had been collected. The actual role of the present petitioner can be examined only when the evidence is analyzed. It is a fact that the matter has been pending for the past 22 years, but as pointed out by the Constitution Bench, the reasons for the delay will have to be examined. The prosecution has claimed justification stating that some accused had died, some accused are absconding, one of the accused has gone abroad and such other factors.

15.The prosecution cannot commence the trial if the accused make a determined effort to scuttle the trial process by alternatively absconding themselves. The accused will then have to face the consequences of delay in the trial process.

16.I do agree that every accused has a right of speedy trial and unwarranted delay violates the fundamental right guaranteed Article 21 of the Constitution of India. But at the same time, it must also be examined whether the accused were either directly or indirectly the reasons for such delay.

17.Taking into consideration, the magnitude of the offence involved, I am not inclined to quash the proceeding even though, the calendar case has been pending for a considerable number of years. I would however give the following directions to the learned Chief Metropolitan Magistrate, Egmore, Chennai:

i). The learned Chief Metropolitan Magistrate, may carefully examine there is a deliberate attempt being made by the accused to absent themselves in turns from appearing before the Court. The learned Chief Metropolitan Magistrate, may then exercise the resort to Section 309 Cr.P.C.

ii).The learned Chief Metropolitan Magistrate, may also examine the possibility of splitting up the case, and may also examine fixing a schedule for framing of charges as against the accused who are present and appearing before the Court and thereafter fix a schedule for examination of witnesses and proceed with the trial and make every endeavour to conclude the same at the earliest.

18.The learned Chief Metropolitan Magistrate should ensure that on no account should the Court be a reason for grant of adjournment or that the prosecution should be a reason for grant of adjournment. The number of days in between any two adjournments may also be shortened to once a week and a commitment may be obtained from the Investigating Officer /



Prosecuting Agency to produce the witnesses and make every endeavour to commence trial at the earliest.

19. With the above observations, the present Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
Central Crime Branch,
Chennai City, Chennai.

2. The Chief Metropolitan Magistrate Egmore, Chennai

3. The Public Prosecutor
High Court of Madras.

Crl.O.P.No.28796 of 2015

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