

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2047 of 2017

Pradip Kumar Hota

.... Petitioner
Mr. N.C. Das, Advocate

-Versus-

State of Odisha

.... Opposite Party
Mr. P.K. Pani, ASC(V)

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF HEARING : 23.11.2021 DATE OF ORDER :04.01.2022

1. Instant application under Section 482 Cr.P.C. is at the behest of the petitioner assailing the order of cognizance dated 21.09.2015 passed in T.R. No.41 of 2015 emanating from Vigilance P.S. Case No.7 of 2010 registered under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act pending in the file of learned Special Judge, Vigilance, Cuttack on the grounds inter alia that the proceeding is required to be terminated on account of inordinate delay and also expedient in the interest of justice.

2. Briefly stated, the petitioner was proceeded with the criminal action on the basis of an allegation as to possession of assets disproportionate to his known source of income, where for, Vigilance Misc. No.5 of 2006 was filed in the court of learned CJM, Cuttack and thereafter, on the strength of a warrant, the Vigilance Department raided the residential and other places related to the petitioner and finally, after enquiry, FIR was lodged on 30.01.2010 vide Annexre-1 and then, the case was registered in 2015 and after submission of charge sheet, cognizance was taken of the offences vide Annexure-2.

3. According to the petitioner, the order of cognizance under Annexure-2 is required to be set aside as the criminal proceeding has become stale, inasmuch as, the enquiry was commenced in 2006 and the FIR was lodged almost after five years and finally, the charge sheet came into being in 2015 and that apart, the impugned order of cognizance was passed nearly after two and half years of his retirement and therefore, it is liable to be set aside and also the proceeding as a whole.

4. Learned counsel for the petitioner contended that on account of substantial delay, it has caused him immense hardship and also resulted in illegality for taking cognizance of the offences in the year 2015 at a time when he had already retired from service in 2013. In support of such a contention, a decision of the Supreme Court in the case of Louis Peter Surin vs. State of Jharkhand reported in 2011 (I) OLR (SC) 125 is cited, wherein, the proceeding was brought to an abrupt end on account of delay.

5. Learned counsel for the Vigilance Department would contend that delay does happen for enquiry and investigation in cases of DA and that apart, delay can not cause any prejudice to the petitioner moreover when a preliminary enquiry is carried out to find out a prima facie case for the purpose of registration of FIR. It is further contended that during investigation also some amount of delay takes place since necessary documents from different departments are collected and therefore, filing of charge sheet and taking of cognizance of the offences in 2015 cannot be held as being unduly delayed and in any way prejudicial to the petitioner and while contending so, the following decisions of the Supreme Court, such as, State of J & K and others Vs. Dr. Saleem Ur Rehman decided in Criminal Appeal No.1170 of 2021 and disposed of on 29.10.2021; Niranjana Hemchandra Sashittal and another Vs. State of Maharashtra: (2013) 55 OCR (SC) 100; and State of

West Bengal and others Vs. M. Bhutoria and others: (1977) 8 SCC 440 have been referred to and relied upon.

6. In so far as the claim with regard to check period is concerned, such a fact is only to be considered during trial and not at this juncture. If the petitioner is having any grievance that his earlier service period prior to 1995-96 was not taken into account for ascertaining the actual assets being accumulated, it can be raised during trial for adjudication.

7. Admittedly, the FIR was lodged in 2010 after an enquiry commenced in 2006. It is equally true to say that after about five years, charge sheet was filed in 2015 and the learned court below then took cognizance of the offences under Annexure-2. So to say, nearly nine years passed by the time the charge sheet was filed in 2015 against the petitioner. As regards the delay, the Court is to consider, whether, it is a ground to quash the proceeding which has become stale, as is claimed by the petitioner.

8. In the case of Louis Peter Surin (supra), the Supreme Court in the peculiar facts and circumstances of the case held and observed that the FIR was registered in 1984 and request for sanction was rejected by the State Government on two occasions and the cognizance of offences was taken by the court four years after the accused had superannuated in 1997. In the humble opinion of the Court, the aforesaid decision of the Supreme Court cannot be applied to the present fact situation and is clearly distinguishable. In other words, in the humble opinion of the Court, it would not be proper to apply the above judgment to the case in hand and in that respect, the contention which is advanced from the side of the petitioner is liable to be rejected.

9. In Dr. Saleem Ur Rehman (supra), it has been held that merely because holding a preliminary enquiry for a certain period, no prejudice can be claimed to have been caused to the accused, since the purpose is

only to satisfy about existence of a prima facie case before the FIR was lodged. In the instance case, enquiry was commenced in 2006 and continued till 2010 and as such, it consumed four years and in view of the ratio of the Supreme Court (supra), no prejudice can be said to have been caused to the petitioner as it was for a limited purpose which was rather beneficial to him. In *Niranjan Hemchandra Sashittal* case *ibid*, it is held by the Supreme Court that duration of a criminal proceeding and speedy trial is a relative expression as no time limit can be fixed. It is further held therein that in certain offences including acquisition of disproportionate assets by public servant, longer time for investigation and trial is consumed, which is by very nature of litigation and while determining, whether, undue delay has occurred in violation of right to speedy trial which is fundamental and a constitutional guarantee emanating from Article 21 of the Constitution of India as held in *A.R. Antulay* case, one must have regard to all the attendant circumstances including the nature of offence, number of accused and witnesses to be examined, work load of the court concerned, other prevailing conditions so on and so forth what is called the systemic delays but of course by having regard to the State's obligation to ensure speedy trial but a realistic and pragmatic approach should be adopted in such matters instead of a pedantic one and ultimately, the court has to balance and weigh several relevant factors-balancing test or balancing process and determine in each case, whether, right to speedy trial in a given case has been denied.

10. In the instant case, the petitioner was a public servant, when the enquiry was started in 2006 as he retired in 2013, where after, the order of cognizance was passed in 2015. The order of cognizance is always subsequent to the commission of offence and the settled law is that on account of retirement, resignation, dismissal or removal of the public servant, the offence is not wiped out which was committed during the service and in that respect, a reference may be had to the

decision in M. Bhutoria relied upon by the State. It is also held in Niranjana Hemchandra Sashittal case that delay does not necessarily leave the only option to quash the proceeding because all such factors are to be gone into and in a given case, appropriate direction may be made fixing a time limit to conclude the trial or reduce the sentence, where the trial has already been over, as may be deemed just and equitable, in the facts and circumstances of the case. In the present case, no doubt, certain delay has taken place in concluding the investigation after consuming four to five years, as the earlier duration of four years during the enquiry was exhausted only to find out a prima facie case against the petitioner before registering the case and the fact that the order of cognizance was of the year 2015 which is later to his superannuation in 2013 that by itself cannot be ground to scuttle the criminal action as the delay could be on account of several factors.

11. Being conscious of the settled principle of law, the Court is of the considered view that despite some amount of delay during the enquiry and investigation, the criminal proceeding initiated against the petitioner cannot be allowed to be brought to an end abruptly.

12. Hence, it is ordered.

13. In the result, application under Section 482 Cr.P.C. at the behest of the petitioner stands dismissed for the reasons discussed herein above. However, considering the fact that the prosecution is pending since last six years, it is expected that the learned court below shall do well to expedite disposal of T.R. No.41 of 2015 preferably within a period of six months unless there appears any legal impediment.

(R.K. Pattanaik)
Judge

