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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 17.05.2022

+ **W.P.(CRL) 707/2021**

MANOJ KUMAR @ MANOJ KUMAR KASHYAP & ANR.

..... Petitioner

Through: Mr. Rajesh Kumar Chaurasia, Mr.
Navin Kumar, Advocates

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR.

..... Respondent

Through: Mr. Avi Singh, Ld. ASC for with Mr.
Karan Dhalla, Ms. Mizba Dhebar, Advs.
Mr. Rakesh Kumar, Advocate for R-2
SI Ramchandra Nehra, PS Kotwali Delhi

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed seeking quashing of the FIR No. 0374/2015 dated 27.04.2015 registered at PS Kotwali, District - North, Delhi, under Section 420/34 IPC and all consequential proceedings emanating therefrom.
2. Mr. Chaurasia, learned counsel appearing for the petitioner has primarily rested his case on the following grounds:-
 - i. That the allegations in the FIR are purely of a civil nature and the criminal process has been initiated only to arm-twist the petitioner;
 - ii. That the charge sheet has been filed after 6 years.



3. As far as the first ground is concerned, it is submitted by the learned counsel for the petitioner that the petitioner No.1 has had business dealings with the respondent No.2 from August, 2014 to February, 2015.
4. There are ledger accounts which show that the petitioner No.1 has been regularly purchasing material from respondent No.2 and making payments to him.
5. He submits that one of the essential ingredients of initiating an FIR under Section 420 IPC is that the petitioner/ accused should have had an intention to cheat from the beginning. The very fact that the petitioner had a business relationship with the respondent No.2 and had been making payments regularly in the past, demolishes the allegations of cheating.
6. Mr. Chaurasia learned counsel for the petitioner further submits that as per his statement of accounts, he has, in fact, made extra payment of Rs. 12 Lakhs. There is decree dated 15.05.2017 against the petitioner and in favour of respondent No.2 for a sum of Rs. 50 lakhs. On 07.01.2016, the petitioner made a statement before the Court of learned ASJ-03, Central Delhi that an amount of Rs. 52,86,730/- is due, and in view of, the statement of the complainant made before the Court of learned ASJ-03, Central Delhi, it is difficult for me to accept that the petitioner has no amounts due and payable.
7. The charge sheet filed also shows that the petitioners have received material from the respondent No.2 and utilized the material and thereafter has closed the shop and run away.
8. From the aforesaid facts, I am *prima facie* of the view that the offence of cheating and breach of trust are made out, as the petitioner after receiving of material from the respondent No.2 has closed his shop and ran away.



There was no reason for the petitioner to run away, if his intention was not to cheat.

9. As far as the second submission with regard to filing of the charge after 6 years is concerned, learned counsel for the petitioner has made a feeble attempt to substantiate the same.
10. He has relied upon '*P. Ramachandra Rao vs. State of Karnataka*' [(2002 4 SCC 578)], wherein, the Supreme Court held that the mandate of Article 21 of the Constitution of India which guarantees right to speedy trial. The Speedy trial includes investigation, enquiry, trial, appeal revision and retrial.
11. I am also not finding favour with this submission. In the case of *Abdul Rehman Antulay v. R.S. Naik*, (1992) 1 SCC 225, the Supreme Court stated as under:-

“(8) Ultimately, the court has to balance and weigh the several relevant factors - ‘balancing test’ or ‘balancing process’ - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.



(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be a qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.”

12. The test laid down in *A.R. Antulay (supra)* 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. Thus the question which arises before me is whether the time spent between registration of FIR dated 27.04.2015 and the chargesheet dated 27.08.2021 can be said to be of such nature that it has infringed the fundamental right guaranteed under Article 21 of the Constitution of India of the Petitioner. On a perusal of the chargesheet it appears that one of the reasons for the delay was due to the alleged absconding of the Petitioner. During investigation, it surfaced that Petitioner, Manoj Kumar had vacated the rented shop bearing shop No. 2059/5 Mahavir Market, Chahlnidara, Bhagirath Palace, Delhi. Due to this, a search for



accused/applicant Manoj Kumar and Suresh Kumar was made at their hideouts but they were found absconding from the given address to avoid their arrest deliberately. NBWs against Petitioner and co-accused Suresh Kumar S/o Sh. Lalit Maurya R/o Village MalkhanPur, PS Mayanma, Distt. Allahabad, U.P. were obtained but could not be executed. The Petitioner Manoj Kumar still could not be traced out, hence, proceedings U/s 82 Cr.P.C. were initiated. On 07-01-2016, accused/applicant Manoj Kumar filed anticipatory bail application before Ld. ASJ (Central), Tis Hazari Court, Delhi. During hearing, the Ld. ASJ directed the accused/applicant Manoj Kumar to join the investigation of the case and ordered not to arrest him till 12-01-2016. It was only then that the Petitioner Manoj Kumar joined the investigation. As mentioned hereinbefore, the Ld, ASJ dismissed the bail application of Petitioner Manoj Kumar on 11-05-2016 due to non-compliance of earlier undertaking that he will pay the amount of Rs, Five lacs on 01-05-2016 to complainant and thereafter he will pay the amount in instalments. On 13-07-2016 Petitioner Manoj Kumar surrendered. During investigation, Petitioner Manoj Kumar was also subjected to produce documentary proof /details of receipt of goods but he failed to do so.

13. In view of the above, it is thus noticed, that not only did the Petitioner evade arrest but also did not comply with any of the undertakings submitted on his behalf. The Petitioner also failed to produce documents relevant to the investigation.
14. Therefore, in my opinion, the question of whether the Petitioner suffered any possible prejudices and disadvantages stand vitiated. The complainant has provided enough material on record which satisfies the technical specifications of the provisions and to support his allegations



that there was fraudulent or dishonest intention of the Petitioner to cheat the respondent No.2 from the very beginning of the transaction.

15. Thus, the time spent between FIR dated 27.04.2015 and the chargesheet dated 27.08.2021 cannot be said to be oppressive or unwarranted.
16. For the reasons stated above, I do not find any merit in the petition and the same is dismissed.

MAY 17, 2022 / (MS)

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)

न्यायमेव जयते