# IN THE HIGH COURT OF JUDICATURE AT PATNA
## CRIMINAL MISCELLANEOUS No.13775 of 2023

Arising Out of PS. Case No.-12 Year-2006 Thana- VIGILANCE District- Patna

Sumit Bagaria @ Sumit Najoria @ Sumit Bajoria, S/o Shri Kailash Bagaria, R/O A-11, 1st Main Road, Raj Mahal Vilas, 2 Stage, Dollars Colony, P.S.- Sanjay Nagar, Bengaluru, Distt- Bengaluru (Karnataka).

... ... Petitioner

Versus

The State of Bihar through Vigilance Investigation Bureau, Govt. of Bihar, Patna, Bihar.

... ... Opposite Party

**Appearance :**

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| For the Petitioner | : | Mr. P.N. Shahi, Sr. Advocate |
| | | Mr. Harsh Singh, Advocate |
| For the State | : | Mr. Jharkhandi Upadhyay, APP |
| For the Vigilance Department: | | Mr. Arvind Kumar, Advocate |

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**

**ORAL JUDGMENT**

**Date : 05-04-2023**

This application has been filed for quashing of the order dated 06.05.2019 passed by learned Special Judge, Vigilance-I, Patna, in Special Case No.10A of 2006, arising out of Vigilance P.S. Case No.12 of 2006, by which the learned Special Judge has taken cognizance against the petitioner for the offence under Sections 420, 465, 467, 468, 471, 477(A), 120-B, 218 and 109 of the Indian Penal Code and under Section 13(2) read with section 13(d) of the Prevention of Corruption Act, 1988.

**2**. The present F.I.R. has been instituted on the basis of joint report dated 03.03.2006 submitted before the

Additional Director General, Vigilance Investigation Bureau. In the report, it has been alleged that for purchasing an Excimer Laser Machine and other items for the use of Indira Gandhi Institute of Medical Sciences (in short “IGIMS), Tender No.01 of 1996-97 was published but, no bid was received. Thereafter, second tender viz. Tender No.02 of 1997-98 was published in daily newspaper namely, Hindustan Times on 07.06.1997. One of the conditions in the second tender was that the tenderer would give a list of users apart from the quotation. Pursuant to the second tender, three companies/firms had participated in the bid. For evaluating the technical bid, a Technical Bid Committee was constituted comprising eight members. Thereafter, from 13 institutes details regarding the make, model, price and service of Excimer Laser Machine was requested by letters. Out of the 13 institutes, response regarding Nidek Excimer Laser Model EC-5000 was received from three institutes responding that they all were using Nidek EC-5000 and the machines were performing satisfactorily.

**2.1**. It is also reported that on 15.01.1998, a meeting of the Governing Body under the Chairmanship of Hon’ble Minister, Health, Education and Family Welfare took place, in which a Special Purchase Committee under the

Chairmanship of the Health Secretary was constituted. Thereafter, on 25.02.1998 in the meeting of the Special Purchase Committee, Dr. Supriyo Ghosh, Eye Institute, AIIMS, New Delhi, participated and opined that M/S Mayur Chiron and K.B.L. Nidek's EC 5000 machine could be purchased. On 19.03.1998, in the meeting of the Governing Body, it was decided that post negotiations would be deemed to be the decision of the Standing Committee of Finance. On 24.03.1998, the meeting of the Special Purchase Committee under the Chairmanship of the Health Commissioner C.K. Basu, took place in the Chambers of the Director, IGIMS. wherein apart from Shri C.K. Basu, five other officers also took part in the meeting. In the said meeting, no one on behalf of M/S Mayur Enterprises had participated in the negotiation whereas, M/S KBL Nidek, New Delhi enhanced the bid amount from Rs.1,23,60,320/- to Rs.1,41,20,000/- with Lasik machine and M/S Gainwell Medimart, Bangluru reduced the bid amount from Rs.1,32,23,430/- to Rs.1,28,00,000/- without auto eye tracking but with Lasik machine. In the said meeting, it was decided to purchase Laser Scan-2000 from M/S Gainwell Medimart, Bengalure. It is also alleged that if the Excimer Laser Machine was to be purchased without auto Eye Tracking then

K.B.L. Nidek's EC-5000 was available for the price of Rs.1,23,60,320/-, in respect of which there was a recommendation of the Specialists and a report was also available regarding users and had been reported as satisfactory. It is also alleged that during the enquiry, it transpired that the machines of M/S Mayur Chiron and Ms. K.L.B. Nidek were to be given preference as per the commendation of the Specialist Committee. However, the Special Purchase Committee informed that machine of M/S Mayur Chiron was not possible to be purchased since the price mentioned by it in the tender was higher than the fund allotted whereas, the offer of M/S K.B.L. Nidek, was rejected without any valid reason.

**2.2**. It is also reported that the price of EC Machine of M/S Nidek Firm was less than the fund allocated by the Government and the same could have been purchased and the Specialist had also recommended this machine and users had reported the performance of the same to be satisfactory. But for extending the wrongful gain, decision was taken to purchase Laser Scan-2000 from M/S Gainwell Medimart for which earlier the committee of Dr. Supriyo Ghosh and Dr. Mahesh Chandra had made no recommendation and the local representative of Gainwell Medimart was orally called for negotiations and thereafter Laser Scan-2000 was selected for purchase.

**2.3**. It is also reported that for purchase of Eximer Laser Machine, an agreement was prepared on 13.04.1998 in which on behalf of the I.G.I.M.S., Dr. D.K. Yadav, Dr. Mahesh Chandra, Dr. Mrinal Anand, Dr. Subhash Prasad and Shri S.R. Gayin and on behalf of Laser Site Technology, its Indian representative T. Chidambaram signed. After the purchase order, M/S Gainwell Medimart through Shri T. Chidambaram sent a letter to the Health Commissioner, Bihar, by which it was pointed out that the cost of Auto Eye Tracking machine was $42,000.00 and if the institute wanted the same it could procure the same by paying additional cost. In the said letter, it has also been requested to issue a fresh supply order after modifying earlier supply order. Thereafter, the institute executed a second contract letter dated 28.05.1998 in which auto eye tracking system was removed. It has also been reported that during enquiry, it transpired that the manufacturer firm had stopped the manufacturing of the machine in the year 1997 itself. Even if the machine had been manufactured in the USA but the same was being imported from Costa Rice, which was contrary to the conditions and was indicative of the fact that machine being a second hand one. When the machine reached its destination at IGIMS then the inspection Committee found several deficiencies in the machine and the same was found to be a second hand junk machine, which is lying useless. It is also reported that the junk machine was sent to India in haste and was lying at Calcutta Airport for several days, for which the airport authority demanded a demurrage of Rs.8,62,808/-. Thereafter, the Director, P.S. Chaudhary took the said amount to Calcutta and stayed there for several days and paid the said amount and thereafter the machine was sent to the institute. It is also reported that the said machine was received in the institute, but from the report of the committee it came to light that the supply had not been made in terms of the contract and that it was an old broken machine and the then Director Dr. Major P.S. Chaudhary, instead of directing for return of the machine and taking action, has called the engineers of M/S Gainwell Medimart and requested for replacing the broken parts of the machine.

**2.4**. It is also reported that from the above facts, it is evident that the accused persons under a conspiracy for personal gain contracted with M/S Gainwell Medimart for substandard Excimer laser Machine against the conditions although there was no written communication to the firm for negotiation and the expert had also not recommended this firm. It is also alleged that the then Health Secretary, C.K. Basu, gave wrong information to Dr. Supriyo Ghosh, got a second opinion and executed a second agreement with M/S Gainwell Medimart without auto eye tracking and user list was also ignored so that Excimer 2000 could be purchased. In the first agreement or in the second agreement, there was no adverse remark of any person against the purchase of Excimer Laser Machine from M/S Gainwell Medimart. Dr. Mahesh Chandra, Dr. Mrinal Anand and Dr. Subhash Prasad had made remarks in context of auto eye tracking in the first agreement but they have not made any remark with respect to Excimer Laser. It is also alleged that after second agreement, none of the persons of the committee filed any complaint and said members of the committee in connivance with the President of M/S Gainwell Medimart namely, T. Chidambaram and local agent namely, Neel Mohan awarded the contract to the M/S Gainwell Medimart without auto eye tracking machine and paid a sum of Rs.80,00,000/- to the said firm whereas, till date the said machine is lying unworkable and unused. It is also alleged that T. Chidambaram, the President of the Company and local agent of the said firm namely, Neel Mohan gave wrong information on behalf of the firm and are involved in the said crime from the very beginning and the then Director, P.S. Chaudhary, after his joining, also involved in the conspiracy and showed interest in getting money paid to the said firm for his own gains. In this manner, the accused persons under a conspiracy got wrong documents prepared and by taking illegal gains, a substandard machine was purchased at an excessive loss causing heavy financial loss to the Government.

**2.5**. It is required to be noted that in the said F.I.R. the petitioner was not arrayed as an accused. However, on 18.04.2018 a supplementary charge-sheet No.49 of 2018 was filed in the instant F.I.R. whereby the petitioner and other persons were arrayed as accused. On the basis of the aforesaid supplementary charge-sheet, cognizance was taken against the petitioner.

**3**. Sri P.N. Shahi, learned senior counsel assisted by Sri Harsh Singh, learned counsel for the petitioner, submits that the petitioner was not made an accused in the F.I.R. lodged by the Vigilance Department in the year 2006, which was lodged after more than six years of investigation. He further submits that the petitioner was neither summoned nor issued any notice by the Vigilance Department at any point of time during investigation. He further submits that after 12 years of lodging of the F.I.R. an officer of the Vigilance Department contacted the petitioner through WhatsApp/SMS only to the extent of getting information regarding Sri T. Chitambaram, who was the erstwhile President of the said company. After which, a formal query vide letter no.225 dated 09.04.2018 was issued in which the petitioner was called but the same was also issued to the extent of getting the information and details regarding Shri T. Chitambaran alone. He further submits that in past also the petitioner duly cooperated in the investigation but surprisingly, in the supplementary charge-sheet the name of the petitioner has been arrayed as an accused.

**4**. Learned senior counsel for the petitioner further submits that the investigation against the former Director General of I.G.I.M.S. was kept pending, who was an official accused in the F.I.R. and against two other doctors of the purchase committee sanction for prosecution was refused and till date the case is pending for appearance of the other accused persons. He further submits that the petitioner is being made a scapegoat for the offence in which he was never made a formal accused and the Vigilance Department has not brought on record any evidence regarding involvement of the petitioner in the present case.

**5.** Learned senior counsel for the petitioner further submits that so far as the allegation in the supplementary charge-sheet that though the Laser Scan 2000 machine was already out of production in 1997 in USA but knowing this fact, T. Chitambaram with an intention to commit cheating submitted the tender with respect to the said machine is concerned, it is baseless allegation as the petitioner was not a party of day-to-day affairs of the company or the negotiations with the IGIMS regarding the same and even if, for the sake of argument, the allegation is accepted to be correct then also it does not constitute any offence as the tender was floated in 1996 and in the F.I.R. itself the unsuccessful bidder M/S. Mayur Chiron gave a statement that the production of the said machine had stopped in 1998 and not in 1997.

**6**. Learned counsel for the petitioner further submits that the allegation that under a conspiracy the first agreement was cancelled and the second agreement was entered into, in which auto eye tracking was required to be purchased separately has been mentioned is completely misconceived as "auto eye tracking" was not a part of the bid of any of the three tenderers and in the entire F.I.R. it has not been established that "auto eye tracking machine" was an essential component of the tender rather it has come during inquiry that the same was an optional part. He also submits that on perusal of the agreement entered between the parties, it appears that subsequent to the agreement, the technical committee had incorporated in hand written note for including "auto eye tracking" machine. This fact would be evident from the letter dated 17.04.1998 (Annexure-7) by which the President of the Company namely, T. Chidambaram on receiving an altered copy of agreement with the handwritten inclusion of "auto eye tracking device", objected to unilateral inclusion of the same by saying that auto eye tracking system was never a part of either company's original bid or subsequent negotiations and in fact all the ten installations in India are without auto eye tracking system.

**7**. Learned senior counsel for the petitioner further submits that so far as the allegation that the machine had to be supplied from USA but the same was brought from Costa Rica is concerned, the same is also misconceived as Enclosure Z2 has inadvertently been issued showing country of origin as Costa Rice but the said mistake was subsequently rectified by the U.S. Chamber of Commerce by issuing a second certificate

(Enclosure-Z3) which clearly mentioned that the machine was being exported from Orlando, Florida, USA. He further submits that the petitioner in the capacity of Managing Director of the Company sent a letter dated 02.06.1999 by which he gave undertaking to IGIMS that the Eexcimer Laser Machine not only originated in USA but was also manufactured by USA based company namely, Laser Sight Technology and the said company would take sole responsibility if there would be any discrepancy found in the origin of the machine.

**8.** Learned senior counsel for the petitioner further submits that so far as the allegation that the Excimer Laser Machine was old one and not in a working condition is concerned, the same is also a false allegation as the Excimer Laser machine was shipped in December 1998 and arrived at Kolkata Airport but in the certificate of country of origin it has wrongly been mentioned as Costa Rice instead of USA and therefore, the customs authority at Kolkata Airport refused to release the same, however, the said mistake was subsequently rectified by the U.S. Chamber of Commerce by issuing a second certificate (Enclosure-Z3) which clearly mentioned that the machine was being exported from Orlando, Florida, USA and when the Machine arrived in Patna in September, 2000 it was uncrafted and not packed properly and also during its storage at Kolkata for over 20 months or in transit, the same suffered dents and damages.

**9.** Learned senior counsel for the petitioner further submits that since the doctors at IGIMS were not experienced with Lasik, in the month of August, 2011, Dr. Gabriel Martin from USA imparted training to the doctors on the second machine, which was fully functional. In fact, another round of training was provided in the month of August, 2001 where eight patients were treated and eleven operations were conducted in presence of Dr. K.P. Reddy, an expert from Hyderabad, but at no point of time either during the training or the operations the machine was found unsuable as has been alleged in the F.I.R.

**10.** Learned senior counsel for the petitioner has also submitted that the dispute was commercial in nature between the I.G.I.M.S. and the petitioner's company and the same was referred for arbitration and late Hon'ble Mr. Justice B.K. Roy (retired) was doing the arbitration but on account of his demise in the amidst of the proceeding, the arbitration is still pending.

**11**. Lastly, learned senior counsel for the petitioner submits that the transaction and the alleged offence is of the years 1996, the F.I.R. was lodged in the year 1996 and the supplementary charge-sheet against the petitioner was submitted in the year 2018 and even after 27 years the case is still pending for investigation against the official accused persons and is further pending at summons stage for appearance of the F.I.R. named accused persons and therefore, the prosecution of the petitioner cannot continue in view of decisions of the Hon'ble Supreme Court rendered in the case of ***Santosh De vs. Archna Guha & Others*** reported in ***(1994) Suppl. 3 SCC 735*** and in the case of ***Pankaj Kumar vs State of Maharashtra & Ors.*** reported in ***(2008) 16 SCC 117***.

**12**. Learned counsel for the Vigilance Department submits that during the enquiry it was found that the members of the Purchase Committee by abusing their official position and in violation of the conditions prescribed in the tender and letter dated 31.03.1997 issued by the Health Department purchased the Excimer Laser Machine without Lasik of inferior quality for IGIMS. He further submits that in the negotiation, M/S Mayur did not participate whereas M/S. K.L.B. New Delhi and M/S Gainwell Medimart Private Limited, Bangalure were present for the negotiations. The

Special Purchase Committee finalized Laser Scan 200 at the rate of Rs.1,28,00,000/- from M/S Gainwell Medimart Private Limited, Banglure without auto eye tracking machine whereas Nidek Excimer Laser Model EC 5000 from K.L.B. New Delhi without auto eye tracking machine was available at the rate of Rs.1,23,60,320/-.

**13**. Learned counsel for the Vigilance Department also submits that against the recommendation of Expert Dr. Ghosh Laser Scan 2000 was purchased from M/S Gainwell Medimart Private Limited Bangaluru for which no user report was ever called for although the same was mandatory as per the conditions of the N.I.T. He also submits that during investigation, it has come that the official accused persons conspired with the President of the Company and local agent as well as the delinquent public servants of IGIMS and on the basis of false and fabricated documents succeeded for supply non-functional old and broker Laser Scan 2000 Machine without Lasik machine to the IGIMS and misappropriated Government fund. As per the terms of the agreement, the petitioner was bound to refund the total money to the IGIMS, Patna as the supplied machine never became operational since the guarantee for aforesaid machine was for a period of three years from the date of operation. He further submits that the petitioner being the Director of the Company conspired with the officials accused persons and misappropriated the Government fund.

**14**. Learned counsel for the Vigilance Department submits that the petitioner in criminal conspiracy with the other accused persons of this case supplied a second hand old and broken Laser Scan 2000 Machine without Lasik and without auto eye tracking device to the IGIMS and even after its replacement with another machine the second machine is still lying idle. Therefore, the accused petitioners cheated the IGIMS.

**15.** I have considered the submissions of the parties and perused the materials available on record. From the record, it appears that for a business transaction of 1996, the F.I.R. has been registered in the year 2006. after investigation by the Vigilance Department i.e. after a period of 10 years of alleged transaction. In the said F.I.R., the petitioner was not arrayed as an accused. However, after 12 years of lodging of the F.I.R. a supplementary charge-sheet was filed in the year 2018 in which the petitioner was arrayed as an accused and on the basis of the aforesaid supplementary charge-sheet, cognizance was taken against the petitioner in the year 2019 and summons have been issued in the year 2021. It also appears that the investigation has been kept pending against the official accused i.e. former Director General of I.G.I.M.S. and even after 17 years of lodging of the F.I.R. the investigation is still going on. In this way, there is unwarranted inordinate delay in investigation of the case. On account of pendency of investigation, the petitioner has already suffered mental and physical agony. Further, nothing could be shown by the Vigilance Department to attribute the aforesaid inordinate delay which was in any way caused by the petitioner. Therefore, this Court is of the opinion that right of the petitioner for speedy trial has been infringed.

**16**. The Hon'ble Supreme Court in the case ***Pankaj Kumar vs State Of Maharashtra & Ors. (supra)*** has held in paragraph nos. 22 to 28 as follows:-

> *"22. It is, therefore, well settled that the right to speedy trial in all criminal prosecutions 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 prosecutions and is not confined to any particular category of cases.*

23. *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 the conclusion of trial.*

24. *Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, the appellant's constitutional right recognised under Article 21 of the Constitution stands violated. It is common ground that the first*

*information report was recorded on 12-5-1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving aforestated three financial irregularities; the charge-sheet was submitted in court on 22-2-1991. Nothing happened till April 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court.*

25. *Though, it is true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant.*

26. *Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of prolonged investigation by the Anti-Corruption Bureau and the sword of Damocles hanging perilously over his head for over fifteen years must have wrecked his entire career.*

27. *Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. 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.*

28. *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 the Special Judge, Latur, deserve to be quashed on this short ground alone."*

**17.** In a similar situation, in the case of ***Santosh De vs. Archna Guha (supra),*** wherein a delay of eight years in commencing the trial was held to be violative of the right of the accused to a speedy trial and the decision of this High Court to quash the criminal proceedings on that ground was affirmed by the Hon'ble Apex Court. It will be relevant to quote paragraph no.18 of the aforesaid decision, which is as follows:-

> *"18. While we appreciate that a serious criminal offence might have taken place at the hands of Respondents 1 to 9, we cannot be oblivious to the fact that almost 17 years have elapsed since the date of that occurrence and there are these several delays pointed out earlier which remain unexplained. <u>We think that in the circumstances the rights of Respondents 1 to 9 to a speedy trial have been breached</u> and no interference with the judgment under appeal is called for. The appeal is dismissed." (emphasis supplied)*

**18**. Moreover, further from the record, it appears that the Government has not sanctioned the prosecution against two accused persons, who are the official accused in the present case. From the record, it also appears that the petitioner being the Director of the company had no role to play in the day-to-day affairs of the company and was certainly not involved in the tender as well as the deal with the I.G.I.M.S. His name has come after 12 years of lodging of the F.I.R. and after 21 years of the date of occurrence through a supplementary charge-sheet. The respondents have tried to implicate the petitioner by stating that he was under the criminal conspiracy with the members of the I.G.I.M.S. but they have not brought any direct or substantial evidence to connect the petitioner with the crime. In this case, a business decision is being investigated by the Vigilacne Department since 1996. The petitioner is the Director of the company, which supplied the machine to the I.G.I.MS. In the tender process, the petitioner company was found L1 and thereafter, he had supplied the machine in question.

**19**. Further, from the reading of the materials on record, I am of the view, that a commercial dispute is being given the colour of criminal case and the dispute is primarily a commercial one and no criminality can be fastened on the petitioner. During the entire investigation, no material has come against the petitioner to connect him with the alleged crime.

Moreover, an arbitration proceeding is pending between the I.G.I.M.S. and the petitioner's company. The petitioner's company had replaced the machine which was supplied by them earlier. It also appears that specialized doctors had trained the doctors of the I.G.I.M.S. to use the machine and had performed eye surgery also. If the doctors of the I.G.I.M.S. failed to utilize the supplied machine for the surgery, the supplier of the machine cannot be prosecuted. Further, the petitioner is the Managing Director of the M/S Gainwell Medimart and in the F.I.R. as well as during the entire investigation no specific allegation has been levelled against the petitioner and no specific role has been assigned to him to warrant his prosecution in a criminal case.

**20.** In view of the above discussions, this Court is of the opinion that the prosecution of the petitioner is illegal and cannot be continued as no offence is made out against the petitioner and the dispute is entirely a commercial dispute. Further, the prosecution of the petitioner also cannot be sustained as the right of the petitioner to a speedy trial has been breached.

**21**. In the result, this application is allowed. The F.I.R. vide Special Case No.10A of 2006, arising out of

Vigilance P.S. Case No. 12 of 2006 and all consequential proceedings arising out of the aforesaid F.I.R. including the order dated 06.05.2019 passed by the learned Special Judge, Vigilance-I, Patna, are hereby quashed with respect to present petitioner only in the interest of justice.

**(Sandeep Kumar, J)**

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| **AFR/NAFR** | A.F.R. |
| **CAV DATE** | N/A. |
| **Uploading Date** | 19.09.2023 |
| **Transmission Date** | 19.09.2023 |