

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1757 of 2019

Arising Out of PS. Case No.-72 Year-2003 Thana- KUMAR KHAND District- Madhepura

Hari Narayan Paswan, Son of Pitambar Paswan, Resident of House No. 72A
Gandhi Path Nehru Nagar, P.S. Patliputra, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar through Home Secretary, Govt. Of Bihar
2. The Superintendent of Police, Madhepura. Bihar
3. Block Development Officer, Block Kumarkhand, District Madhepura. Bihar
4. Officer-in-Charge Kumarkhand Police Station, Madhepura. Bihar

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. Sheo Shankar Prasad, S.C.-8

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 29-04-2023

This application has been filed for quashing of the F.I.R. vide Kumar Khand P.S. Case No.72 of 2003 registered for the offence under Sections 409, 406, 420, 120-B, 204, 218 and 119/34 of the Indian Penal Code.

The prosecution case is that the Block Development Officer, Kumar Khand, District- Madhepura sent a letter to Station House Officer, Kumar Khand Police Station on the direction of the District Magistrate, Madhepura. In the said letter, it has been alleged that under “*Sunischit Rojgar Yojna*” a bridge was to be constructed and for that, Scheme No. 2 of



1998-99 was sanctioned and advance amount of Rs.7000/- was paid to the contractor by the then Block Development Officer namely, Anil Kumar Yadav and the last payment of Rs.3,31,500/- was made by the then Block Development Officer namely, Ajay Kumar Singh. It is alleged that in February, 2003 an audit team visited the office for audit and demanded the file of aforesaid scheme no. 02 of 1998-1999 but the concerned Assistant namely, Gajendra Kumar Singh shown his inability to provide the said file by saying that the file is not traceable. He also stated that earlier Assistant namely, Bal Krishna Yadav did not hand over the said file to him. It is also alleged that said Bal Krishna Yadav, through his letter has reported that the record the scheme was sent to the then Block Development Officer for signature but the same did not return. With respect to register of the scheme, it has been reported that the register of the scheme was sent to the residence of the petitioner for signature but the same was misplaced from the residence of the petitioner. After audit, it has come to the notice that the though sanctioned amount for the scheme was Rs.8,15,400/- but an amount of Rs.14,01,500/- was paid to the contractor, thereby an excess amount of Rs.5,86,100/- was paid to the contractor. Accordingly, it was directed to lodge F.I.R. against all the



persons including the petitioner.

It has been submitted by learned senior counsel for the petitioner that the petitioner has paid an amount of Rs.3,43,000/- through account payee cheques to the contractor on the basis of measurement book submitted by the Junior Engineer, which is general process to pay the amount to the contractors. He further submits that the Superintendent of Police, Madhepura himself supervised the case and after investigation has exonerated the petitioner from all the charges levelled against him.

Learned senior counsel for the petitioner submits that the present F.I.R. has been lodged on 01.08.2003 and even after 20 years the investigation is continuing and therefore, this kind of investigation should not continue as the petitioner has already suffered a lot.

In support of his submission, learned senior counsel for the petitioner relies upon the decisions of the Hon'ble Supreme Court rendered in the case of *Santosh De vs Archna Guha And 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*.

Learned counsel for the State fairly submits that



still the case is pending for investigation.

I have considered the submissions of the parties. I have also perused the materials available on record. In nutshell, the allegation against the petitioner and others are that the sanctioned amount for construction of a bridge was Rs.8,15,400/- but the accused persons have paid Rs.14,01,400/- to the contractor, thereby an excess amount of Rs.5,86,100/- has been paid by the accused persons to the contractor. From the record, it appears that the Superintendent of Police, Madhepura has supervised the case and after thorough investigation, he submitted his report dated 19.08.2006 exonerating the petitioner from all the allegations on the ground that his involvement in the crime is not proved.

Moreover, it appears that the F.I.R. is of the year 2003 and even after 20 years the investigation is still going on. Nothing could be shown by the State to attribute the aforesaid inordinate delay was in any way caused by the petitioner. Therefore, this Court is of the opinion that this kind of investigation should not continue as because of this pending investigation the petitioner has already suffered a lot.

The Hon'ble Supreme Court in the case ***Pankaj Kumar vs State Of Maharashtra & Ors*** (supra) has held in



paragraph nos. 17 and 18 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 aforesaid 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.”

Similar view has been taken in the case of **Santosh De vs Archna Guha And Others** (supra).

In view of the above observations of the Hon’ble Supreme Court and also considering the facts of the case, as discussed above, this application is allowed. Accordingly, the F.I.R. vide Kumar Khand P.S. Case No.72 of 2003 and all other consequential proceedings arising out of aforesaid F.I.R. are hereby quashed with respect to present petitioner in the interest of justice.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	10.05.2023
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