

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2235 OF 2023

Mohammad Zahid Siddique

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Abhijeet Desai a/w Karan Gajra, Vijay Singh & Sukhada Gorule
i/by Desai Legal, for the Petitioner.

Smt. A. S. Pai, PP a/w Mr. J. P. Yagnik, APP for the
Respondent/State.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 12th JULY, 2023

PC. (Per Nitin W. Sambre, J.)

1. Petitioner is seeking quashing of FIR vide Crime No.168 of 2004 registered with Vile Parle Police Station along with consequential proceedings in Criminal Case No.3386/PW/2005 pending on the file of 65th Court MM Court, Andheri.

2. The facts necessary for deciding the present writ petition are as under :-

The firm, M/s. Taj Exhibit Private Limited allegedly contacted the informant company for supply of material for organizing exhibition. Pursuant to negotiation, an agreement was executed on 10th March, 2004 between the firm M/s. Taj Exhibit

Private Limited and the complainant. The exhibition was to be organized at Somaiya Ground.

3. It is alleged that the petitioner has issued cheques on 10th April, 2004 towards the cost of supply of material which were dishonoured.

4. As the aforesaid cheque amount was not paid, it is alleging that the petitioner has committed an offence punishable under Section 406, 420, r/w 34 of IPC. The aforesaid offence being Crime No.168 of 2004 came to be registered.

5. Counsel for the petitioner at the outset submits that trial has reached at much advanced stage as the recording of evidence is complete and the same is posted for final arguments. According to him, the petitioner is facing trial since 2004 i.e. almost for last nineteen years. Petitioner cannot be blamed for delayed trial. Petitioner has already suffered for last nineteen years. He would urge that the allegations are purely based on the contract/agreement dated 10th March, 2004. According to Mr. Abhijeet Desai, the unreasonable delay of nineteen years has already made the petitioner to suffer a lot. He would draw support from the following judgments, which in categorical term provide not only for quashing but also for disposal of trial in time bound manner :-

1) ***Pankaj Kumar Vs. State of Maharashtra (2008) 16 SCC 117.***

2) ***Vakil Prasad Singh Vs. State of Bihar (2009) 3 SCC 355.***

3) ***Santosh De Vs. Archana Guha 1994 Supp(3) SCC 735.***

4) ***Kunti Vs. State of U. P (2023) 6 SCC 109.***

6. It is submitted that perusal of the contract and the allegations in the FIR will give rise only to commercial/contractual dispute and there is no element of *mens rea* on the part of the petitioner. It is further claimed that the complainant has not initiated suit for recovery of the dues which demonstrate that nothing was due and payable by the petitioner. That being so, the present criminal proceedings cannot be used for the purpose of recovery of alleged dues from the petitioner. It is also claimed that the alleged agreement was entered into between the company and the respondent/complainant. The company since is not impleaded as party respondent, the prosecution itself is not maintainable. A support is drawn from the judgment of ***Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd.*** reported in ***(2012) 5 SCC 661.***

7. Mr. Abhijeet Desai, learned counsel for the petitioner would invite attention of this court to the *inter se* agreement entered into between the respondent/complainant and the firm M/s. Taj Exhibit Private Limited which is a company registered under the companies act. According to him, in the said agreement dated 10th March, 2004, the petitioner is not a signatory and as such, he cannot be said to be bound by the aforesaid agreement. As such, the contentions of Mr. Abhijeet Desai are, the prosecution is liable to be

quashed and set aside.

8. Learned APP would oppose the prayer, as according to him, since the charge is already framed and trial has reached at an advanced stage, this Court should be slow in causing interference.

9. We have appreciated the submissions.

10. It is not in dispute that the petitioner is facing trial since 2005 i.e. for almost eighteen years. The Apex Court in the judgment of *Pankaj Kumar (cited supra)* has held that the speedy trial in all the criminal proceedings is an inalienable right under Article 21 of the Constitution of India. To find out the infringement of such right of speedy trial of the parties like petitioner, the Court is required to perform balancing act by taking into account all the attending circumstances. He has also invited our attention to the judgment of Apex Court in the matter of *Vakil Prasad Singh (supra)*. Apex Court in the said judgment, particularly, paragraphs 24, 25 and 29 has reiterated the above said position of law. Similarly, in the judgment of Apex Court in the matter of *Santosh De (supra)*, particularly, 18, wherein the Apex Court has refused to cause interference in the Appellate Court and appeal against acquittal.

11. The fact remains that the petitioner has already suffered because of pendency of the aforesaid trial for last eighteen years. Apart from above, the claim of the petitioner is that the company is

not a party to the criminal proceedings and the petitioner is not a signatory to the agreement. The complainant has not initiated civil proceedings for recovery of the amount. All these issues are having substance and will have direct bearing over the merits of the trial. Instead of causing interference at the fag end of the matter, as such we deem it appropriate to dispose of the petition with observations that the trial Court shall be sensitive to all the aforesaid issues while dealing with the defence of the petitioner in the aforesaid trial.

12. With above observations, we dispose of the present petition.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]