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W.A.No.1124 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:10.07.2023

Delivered on: 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.1124 of 2013, Crl.O.P.No.1403/2013

and W.P.No.13454 of 2013

&

M.P.Nos.1,1 and 2 of 2013

W.A.No.1124 of 2013

The Deputy Superintendent of Police
Vigilance and Anti Corruption
Chennai City-I Detachment
NCB-24, P.S.Kumarasamy Raja Street
R.A.Puram
Chennai-28

.. Appellant

Vs.

N.Shivaji Rao

.. Respondent

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in M.P.No.02 of 2013 in W.P.No.13454 of 2013 dated 30.04.2013.



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For Appellant : Mr.R.Shanmugasundaram,
Advocate General assisted by
Mrs.Geetha Thamaraiselvam, Spl.G.P

For Respondent : Mr.K.J.Rebello

Crl.O.P.No.1403 of 2013

M/s. Barnas International (P) Ltd
No.8, Valliammal road
Ritherdon road, Vepery
Chennai-600 007

.. Petitioner

Vs.

The Deputy Superintendent of Police
Vigilance and Anti Corruption
Chennai City-I Detachment
NCB-24, P.S.Kumarasamy Raja Street
R.A.Puram
Chennai-28

.. Respondent

Prayer:- Criminal Original Petition filed under Sec.482 Cr.P.C pleased to call for the records in FIR in Crime No.6/AC/CCI/2012 on the file of Deputy Superintendent of Police, Vigilance and Anti-Corruption, Chennai City-I detachment and to quash the same.

For Petitioner : Mr.V.S.Sivasundaram

For Respondent : Mr.R.Muniyapparaj, APP



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N.Shivaji Rao

.. Appellant

Vs.

The Deputy Superintendent of Police
Vigilance and Anti Corruption
Chennai City-I Detachment
NCB-24, P.S.Kumarasamy Raja Street
R.A.Puram
Chennai-28

.. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the complaint in FIR No.06/2012, dated 15.03.2012 on the file of the respondent and quash the same.

For Petitioner : Mr.K.J.Rebello

For Respondent : Mr.R.Muniyapparaj, APP

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Writ petition has been filed challenging the FIR in Crime No.6 of 2012 dated 15.03.2012.



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2. The facts of the case as set out by the Writ Petitioner in the affidavit in support of the Writ Petition are that the petitioner is the Vice President of a company by name M/s. Barnas International Private Limited, which is involved in the business of supply of Closed Circuit Television Surveillance Units. The said company was selected as the lowest tenderer out of four bidders for supply to be made to Anna University in an open tender process. The Deputy Superintendent of Police (Vigilance and Anti-Corruption) Chennai, registered a case under Sec.120(B), 467,471 and 420 IPC and 13(2) r/w. Sec.13(1)(d) of the Prevention of Corruption Act, 1988, wherein the company has been named as the accused. It is the specific case of the petitioner that no final report has been filed based on the compliant dated 15.03.2012. However, the petitioner has been harassed by the respondent though he is not shown in the array of accused.

3. The further case of the petitioner is that he has neither signed any tender documents nor participated in the process of supply of materials to Anna University. It is the further case of the petitioner that no public servant as defined under the Prevention of Corruption Act, 1988 (in short 'Act') has been cited as an accused and the complaint itself is vague by



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mentioning “unknown public servants of Anna University”. According to the petitioner there is no material to proceed against him. The case has been filed by the respondent only to satisfy the petitioner's superiors.

4. The said Writ Petition came up before the learned single Judge for admission and the order passed on 30.04.2013 reads as follows:

“I have heard Mr.Alagirisamy, learned Senior counsel appearing for the petitioner and Mr.Shanmuga Velayudham, learned Public Prosecutor.

There shall be an order of interim stay.

Notice.

Call on 12.06.2013.”

5. Writ Appeal which is also before us viz., W.A.No.1124 of 2013 has been filed by the state viz., the respondent in the Writ Petition challenging the interim order viz., stay granted by the learned single Judge on the grounds that Courts should not stay proceedings under the Prevention of Corruption Act and interim order passed was not inline with Sec. 19(3) (c) of the Act and also contending that the investigation had just commenced and being in a crucial stage viz., FIR , it was seriously prejudicing the



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investigation which involves collection of evidence, examination of witnesses etc., and that delay would only defeat the cause of justice.

6. Pursuant to an order passed by this Court on 25.06.2013, the Writ Petition was also directed to be posted along with the Writ Appeal for hearing and accordingly both the Writ Petition as well as the Writ Appeal are posted before us.

7. We have heard the learned Advocate General, Mr.R.Shanmuga Sundaram assisted by Mrs.Geetha Thamaraiselvan, Special Government Pleader for the appellant and Mr.K.J.Rebello for the respondent/Writ Petitioner and Mr.R.Muniyapparaj, Additional Public Prosecutor representing the state in the Crl.O.P as well as the Writ Petition.

8. Learned Advocate General would invite the attention of this Court to Sec.19(3)(c) of the Act to lay emphasis and fortify his argument that Courts should not stay proceedings under the Act under any ground and therefore the learned single Judge had clearly fell in error in granting an interim stay. Learned Advocate General would also place reliance on the



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decision of the Hon'ble Supreme Court in *Sathya Narayana Sharma Vs. State of Rajasthan, 2001 8 SCC 607*, wherein the Hon'ble Supreme Court held that Courts could not grant stay by use of any power on any ground, which included the Court exercising inherent jurisdiction U/s. 482 of the Cr.P.C. The learned Advocate General would therefore state that FIR could not have been stayed and the stay has caused serious prejudice to the investigation and therefore prayed that the Writ Appeal be allowed and the Writ Petition be dismissed.

9. Per contra, the learned counsel for the respondent in the Writ Appeal and petitioner in the Writ Petition would contend that the petitioner has not been arrayed in his individual name in the FIR and merely because he is the Vice President of the said company, the petitioner is being harassed and therefore when even according to the appellant, the petitioner was not a necessary person to be named in the FIR, there would be no useful purpose in keeping the said FIR alive and therefore advanced his arguments on the line that the Writ Petition is not only maintainable and also that the interim stay granted pending disposal of the Writ Petition need not be interfered with. Learned counsel for the Writ Petitioner would also



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state that the decision relied on by the learned Advocate General would not have any relevance to the facts of the present case where admittedly the petitioner is not named in the FIR. The counsel for the Writ Petitioner would therefore, pray for Writ Petition being allowed and consequently suitable orders be passed in the Writ Appeal as well.

10. This Court has heard the arguments advanced by the counsel on either side and also perused the records placed by way of typedsets and also the judgment of the Hon'ble Supreme Court relied on by the Advocate General.

11. The copy of the FIR in Crime No.6 of 2012 is produced before us. No doubt, the company in which the petitioner is the Vice President has been named as the accused. However, it is seen that in the body of the FIR, the name of the Writ Petitioner has been mentioned and it is the accusation against the company that the company has fabricated bogus quotations in the names of four other companies and participated in the tender and by using the names of four bogus companies, the company has fraudulently, with the connivance of Anna University department officials, procured



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orders between the years 2007-2010 causing severe monetary loss to the Anna University in purchase of electronic items. Admittedly, the company viz., Barnas International Private Ltd is a company incorporated under the Companies Act, 1956. Eventhough, the company may have a separate legal entity, the company is run only by its authorised persons. It is the specific claim in the FIR that the owner and head of the company, Chief Executive Officer, Vice President and Head of Surveillance department/manager are involved in the business of the company. When the FIR states that the company has fabricated bogus quotations, it only means that the persons incharge of the company are behind the said act. Therefore, to contend that the petitioner has not been named as an accused is without any force and this Court is unable to accept the argument of the learned counsel for the respondent/ Writ Petitioner.

12. As rightly pointed out by the learned Advocate General, the Hon'ble Supreme Court has cautioned Court from granting interim orders or staying proceedings under the Act. Infact, the Hon'ble Supreme Court in *Asian Resurfacing of Road Agency Vs. Central Bureau of Investigation* reported in **2018 16 SCC 299**, held that even though the High Court in



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exercise of its power under 397(2) Cr.P.C or 482 Cr.P.C or Art.226 and 227 of the Constitution of India is entitled to call for records and stay proceedings in appropriate cases and inherent power of the High Court is not limited or affected by statutory provisions, the Hon'ble Supreme Court clarified that keeping in view that statutory objective of Sec.19(3)(c) of the Act and right of a speedy trial under Art.21 of the Constitution of India, interference can be made only to check abuse of process of Court or against proceedings initiated illegally or vexatiously or without jurisdiction. The Apex Court further went on to hold that stay causes delay and therefore granting of interim stay must be exercised with caution and restraint and even in cases where the Court deems it fit to grant an interim stay, finding a prima facie case, even then appropriate conditions ought to be imposed to hold the party seeking stay accountable if ultimately no merit is found and the order granting stay or extending it must be a speaking order and that stay should not be allowed to operate long and such cases ought to be decided on day to day basis, especially in corruption cases should be decided within a period on a day to day basis normally not exceeding two to three months.

13. Coming to the facts of the present case, admittedly the petitioner



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challenges only an FIR and he has obtained stay of the said FIR by way of an interim order way back on 30.04.2013. We have already extracted the said order of the learned single Judge. It is not a speaking order and absolutely no reasons have been given for granting an interim stay of the FIR. Moreover, by granting such an interim order, staying the very FIR itself, the entire investigation has come to a stand still for the last 10 years. The very object of a speedy investigation and trial in corruption cases would stand defeated if such interim orders are granted and the proceedings are kept in cold storage for more than a decade. Even applying the ratio of the Hon'ble Supreme Court in *Asian Resurfacing of Road Agency Vs. Central Bureau of Investigation*, reported in **2018 16 SCC 299**, the Writ Petition itself is not maintainable. It is needless to state that interim order granting stay of the FIR is also consequently liable to be set aside.

14. Crl.O.P.No.1403/2013 has also been placed before us along with the Writ Petition and Writ Appeal. The said Criminal Original Petition has been filed by the accused company, M/s. Barnas International Private Ltd. The counsel appearing for the petitioner in the said Criminal Original



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Petition represents that the counsel does not have any instructions from the company and therefore prayed that suitable orders may be passed in the said Criminal Original Petition.

15. We have seen that the Criminal Original Petition has been filed challenging the very same FIR in Crime No.6/2012. The discussion herein above with regard to the Writ Petition equally applies to said CrI.O.P as well. The CrI.O.P also deserves to be dismissed.

16. In fine, the Writ Petition No.13454 of 2013 and CrI.O.P.No.1403 of 2013 are dismissed. In view of the Writ Petition itself is being dismissed, nothing survives for consideration in the Writ Appeal and consequently, Writ Appeal is closed. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K.J) & (P.B.B.J)
25.07.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No



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To
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The Deputy Superintendent of Police
Vigilance and Anti Corruption
Chennai City-I Detachment
NCB-24, P.S.Kumarasamy Raja Street
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D.KRISHNAKUMAR, J.,
and



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P.B.BALAJI,J

(kpr)

Pre-delivery judgment in
W.A.No.1124 of 2013,
CrI.O.P.No.1403/2013
and W.P.No.13454 of 2013

25.07.2023