IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 46621 of 2015

Arising Out of PS. Case No.-27 Year-1996 Thana- C.B.I CASE District- Patna

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Awadhesh Son of Dinferan Dubey, Retired Superintending Engineer, Bihar State Housing Board residing at 303, Rajkishori Apartment Apartment, Kavi Raman Path, Police Station - Buddha Colony, District - Patna

... ... Petitioner/s

Versus

The State Of Bihar Through The Inspector, Department Of Vigilance, Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Pushkar Narain Sahi, Sr. Advocate Mr. Alok Kumar Sinha, Advocate Mrs. Madhuri Lata, Advocate
For the Opposite Party/s (Vigilance)	:	Mrs. Archana Palkar Khopde, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 19-03-2024

1. The present petition preferred for quashing the order taking cognizance dated 10.06.2015 by Special Judge, Vigilance-1, Patna in Vigilance Case No.27/1996 corresponding to Special Case No.26/1996 for the offences under Sections 406, 409, 467, 468, 471, 477 A, 120 B of the Indian Penal Code and Sections 13(2) read with Section 13(1) (c) & (d) of the Prevention of Corruption Act.

2. The factual matrix of this case speaks that on 10.09.1996 at 15.00 hours Sri Parmanand Singh, Inspector of Vigilance lodged one FIR which was

numbered as Special Case No.27/1996, corresponding to Special Case No.26|1996 against Sambhu Sharan Thakur, the then Chairman, Ram Janam Singh, Legal Advisor, Awadhesh (petitioner) Estate Officer, Jagdish Prasad, Section Officer, Chandrika Yadav and Sidheswar Prasad both assistants and Sri S.N. Ojha, Architect of Bihar State Housing Board, Patna and others alleging inter alia that during preliminary inquiry it was found that accused persons named in the F.I.R. including the petitioner acted against the rules and allotted the houses and lands and thereby causing financial loss to the Housing Board. It is further alleged that Sambhu Sharan Thakur was the Chairman of the Bihar Housing Board During 1980 and 1982 and during this period the houses in lottery meant for middle income group were not allotted against the list prepared. It is further alleged that Ram Janam Singh, Legal Advisor, Awadhesh (petitioner) Estate Officer, Jagdish Prasad, Section Officer, Chandrika Yadav and Sidheswar Prasad both assistants were responsible for the same. The file relating to the allotments was examined by the personnels of Vigilance. It is further alleged that allotments were made after obtaining application on plain papers instead of requisite application form, thus by causing loss of more than Rs. 25,00,000/- to the Housing Board.

3. With aforesaid allegations, on 18.09.1996, Vigilance P.S. Case No. 27/1996 was lodged in Vigilance P.S. by Parmanand Singh, Police Inspector, Vigilance Investigation Bureau, Patna in which the petitioner has been made accused. The case was filed under various sections of Indian Penal Code and Prevention of Corruption Act, 1988.

4. No sooner the petitioner knew about the FIR he sent/submitted parawise clarification regarding all the allegations and showing that there was no charge against him to S.P., Vigilance, Patna on 01.10.1996 itself. But without taking cognizance of facts and records

placed before them the Vigilance P.S. has submitted charge sheet against him before Special Judge, Vigilance- 1st, Patna.

5. Learned senior counsel Mr. P.N. Sahi appearing for the petitioner submitted that the petitioner joined as Estate Officer of Bihar Estate Housing Board on 26.09.1981, whereas the maximum allotment of disputed plots of land of Housing Board Society, took place prior to his posting as estate officer, which took place mainly in year 1980s. It is pointed out that the implication of this petitioner with present case appears mainly for two reasons, firstly, as he started to oppose the malpractices prevailing in the office which has been started during the period of his predecessors and secondly as per FIR one land in issue was allotted to him also by defying the rules and adopting malpractices. It is pointed out by Mr. Sahi that the allotment of plots under second allegation to the petitioner and co-accused persons were challenged before the Hon'ble High Court

through CWJC No. 3900 of 2005, where one of the learned co-ordinate bench of this Court affirmed allotment in favour of petitioner and other co-accused. Finding of the learned single Judge was challenged before the Division Bench in form of LPA (Latent Patent Appeal) through LPA No. 1617 of 2012, which was dismissed on 8th July, 2017. It is further submitted by Mr. Sahi that the department challenged the outcome of aforesaid LPA of this court before Hon'ble Supreme Court, where entire records of proceeding were called by Hon'ble Supreme Court and after perusal of all such records, the SLP No. 36820/2013, which was preferred by department was dismissed by Hon'ble Supreme Court on 08.11.2016 (Annexure-IX). It is submitted that as the entire allegation against petitioner travelled up to Apex Court which was ultimately dismissed, therefore, now nothing survived against petitioner as raised through present FIR. It is further submitted by learned senior counsel that the present FIR was lodged on

18.09.1996 for the occurrence which alleged to be taken place between year 1980-1982, where the investigation remains continued for long 21 years and the charge-sheet was submitted only on 26.05.2015 for which the cognizance was taken on 10.06.2015, which is the present impugned order. It is also submitted by learned senior counsel that for the allegation of illegal allotment in own favour, what raised against petitioner, through present FIR, a departmental proceeding was initiated, where the petitioner was initially put on suspension and after concluding of departmental enquiry his suspension was revoked vide order dated 27.08.1990 and he was discharged from all the charges as raised in departmental proceeding initiated through notification no. 2935 dated 23.06.1984. Order of revocation of suspension and exoneration of petitioner was notified through notification no. 152 dated 27.08.1990 and he was duly paid salary for suspension period alongwith all allowances. It is further submitted that in-house vigilance department of Housing Board, gives a clear cheat to petitioner and by acting upon that report, petitioner was given due promotion and as such the second allegation as raised against petitioner, as discussed above, also not appears existing and therefore continuing with present proceeding would only amount to misusing the process of law and as such the cognizance order is liable to be set aside and quashed.

6. While concluding the argument, Mr. P.N. Sahi learned senior counsel relied upon the legal reports as reported in the matter of **Santosh De vs. Archna Guha and Others** reported in **1994 Supp (3) SCC 735** and also the matter of **Pankaj Kumar vs. State of Maharashtra and Others** reported in **(2008) 16 SCC 117,** where, Hon'ble Apex Court considered the delay factor and by considering only extra-ordinary delay taken by investigating agency to investigate the matter, the proceedings *qua* petitioners were quashed. Learned senior counsel further relied upon the report of **Ashoo**

Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and Another reported in **(2020) 9 SCC 636,** wherein Hon'ble Supreme court settled a legal ratio that if a person exonerated in departmental proceeding, which requires lesser restrict proof, is also liable to be made free from the allegation as raised for same facts through criminal litigation or proceedings, which requires burden of strict proof.

7. Mrs. Archana Palkar Khopde, learned advocate appearing for Vigilance Department Government of Bihar, while opposing the application submitted that the delay in issue as raised by learned senior counsel appearing for petitioner, is not appears relevant in the present case for the simple reasons that in present case delay was caused due to pending litigations before this Court and Apex Court, which were initiated by different co-accused persons at different point of time. It is further submitted by Mrs. Khopde that factual matrix of the present FIR is different with

the charges as raised against petitioner through departmental proceedings and as such the finding of Hon'ble Supreme Court in the matter of **Ashoo Surendranath Tewari Case (supra)** is of no bearing. Learned counsel for vigilance department relied upon the legal reports of Hon'ble Supreme Court as reported in the matter of **Abdul Rehman Antulay etc. vs. R.S. Nayak and Another** reported in **AIR 1992 SC 1701.** While concluding the argument, learned counsel conceded the fact that she is not in a position to explain the delay particularly for the period of 1988-1996. While concluding the argument, it is submitted that re-appreciation of evidence is not permissible at this stage as it would be amounting to mini trial and in support of her submission, learned counsel also relied upon the report of **Central Bureau of Investigation vs. Aryan Singh etc.** as reported in **2023 SCC OnLine SC 379.**

8. Taking a counter note of the submissions as raised by Mrs. Archana Palkar Khopde appearing for

vigilance department, the learned senior counsel Mr. P.N. Sahi submitted that the case of **A.R. Antulay (supra)** is well discussed and taken care of by Hon'ble Supreme Court while delivering the ratio in the case of **Pankaj Kumar (supra).**

9. It would be apposite to reproduce the relevant paragraphs of the aforesaid discussed legal reports, where at first instance, it would be apposite to discuss the Paragraph Nos. 18, 19, 20, 21 and 22 of **Pankaj Kumar case (supra)** which reads as:-

> 18. The exposition of Article 21 in *Hussainara Khatoon (1) case* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay* v. *R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (*i*) fair, just and reasonable procedure implicit in

Article 21 of the Constitution creates a right in the accused to be tried speedily; (*ii*) the right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial; (*iii*) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is—who is responsible for the delay?; (*iv*) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including the nature of offence, the number of accused and witnesses, the work load of the court concerned, prevailing local conditions and so on—what is called, the systemic delays; (*v*) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (*vi*) ultimately, the court has to balance and weigh several relevant factors—"balancing test" or "balancing process"—and determine in each case whether the right to speedy trial has been denied; (*vii*) ordinarily speaking, 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, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (*viii*) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. 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; (*ix*) 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 the High Court must, however, be disposed of on a priority basis.

19. Notwithstanding elaborate enunciation of Article 21 of the Constitution in *Abdul Rehman Antulay* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] and rejection of the fervent plea of proponents of the right to speedy trial for laying down time-limits as bar beyond which a criminal trial shall not proceed, pronouncements of this Court in "*Common Cause", A Registered Society* v. *Union of India* [(1996) 4 SCC 33 : 1996 SCC (Cri) 589] , "*Common Cause", A Registered Society* v. *Union of India* [(1996) 6 SCC 775 : 1997 SCC (Cri) 42] , *Raj Deo Sharma* v. *State of Bihar* [(1998) 7 SCC 507 : 1998 SCC (Cri) 1692] and *Raj Deo Sharma (II)* v. *State of Bihar* [(1999) 7 SCC 604 : 1999 SCC (Cri) 1324]

gave rise to some confusion on the question whether an outer time-limit for conclusion of criminal proceedings could be prescribed whereafter the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused.

20. The confusion on the issue was set at rest by a seven-Judge Bench of this Court in *P. Ramachandra Rao* v. *State of Karnataka* [(2002) 4 SCC 578 : 2002 SCC (Cri) 830] . Speaking for the majority, R.C. Lahoti, J. (as His Lordship then was) while affirming that the dictum in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] is correct and still holds the field and the propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in the said case adequately take care of the right to speedy trial, it was held that guidelines laid down in *A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case as it is difficult to foresee all situations and no generalisation can be made.

21. It has also been held that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Nonetheless, the criminal courts should exercise their available powers such as those under Sections 309, 311 and 258 CrPC to effectuate the right to speedy trial. In appropriate cases, jurisdiction of the High Court

under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. The outer limits or power of limitation expounded in the aforenoted judgments were held not to be in consonance with the legislative intent.

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.

10. It would be further apposite to reproduce Paragraph Nos. 8, 9, 10, 11 and 13 of **Ashoo Surendranath Tiwari (supra),** which reads as:-

8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In *P.S. Rajya* v. *State of Bihar* [*P.S. Rajya* v.*State of*

Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , the question before the Court was posed as follows: (SCC pp. 2-3, para 3)

> "*3.* The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(*e*) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission."

9. This Court then went on to state: (*P.S. Rajya case* [*P.S. Rajya* v.*State of Bihar*, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 5, para 17)

> "*17.* At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it."

10. This being the case, the Court then held: (*P.S. Rajya case*[*P.S. Rajya* v.*State of Bihar*, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 9, para 23)

> "*23*. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view [*Prabhu Saran Rajya* v. *State of Bihar*, Criminal Miscellaneous No. 5212 of 1992, order dated 3-8-1993 (Pat)] that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."

11. In *Radheshyam Kejriwal* v.*State of W.B.* [*Radheshyam Kejriwal* v.*State of W.B.*, (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31)

> "*26*. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement

Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In *B.N. Kashyap* [*B.N. Kashyap* v. *Crown*, 1944 SCC OnLine Lah 46 : AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (SCC OnLine Lah: AIR p. 27)

> '... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.'

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29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

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31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case."

13. It finally concluded: (*Radheshyam Kejriwal case* [*Radheshyam Kejriwal* v. *State of W.B.*, (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para 39)

"*39*. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

11. It would also be appropriate to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335,*** which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate

within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. In view of aforesaid factual and legal discussions, it appears that the present occurrence took place in year 1980-1982, for which FIR was lodged after about 14 years i.e. in year 1996, where investigation was continued thereafter, for long 20 years and the charge-sheet was submitted in year 2015 only certainly, this much inordinate & unexplained delay to lodge FIR & investigation is not permissible in view of aforesaid established legal ratio of Apex Court. There was no stay of proceedings in judicial side, therefore, plea as raised by department that it was pending litigation which caused delay, is of no substance, moreover, department also failed to explain the delay for the period of 1988-1996. It further appears that petitioner exonerated in

departmental proceeding and also got clearance of in-house vigilance department of the housing board, and received all his dues with promotion. This matter also appears travelled up to Hon'ble Supreme Court through SLP No. 36820/2013, where entire vigilance record including present FIR was called for and subsequently the said SLP was dismissed. Allegation of allotment of plot in own favour being member of housing board colony also affirmed in judicial side by this Hon'ble High Court, where the Hon'ble Supreme Court not inclined to interfere as aforesaid. Accordingly, continuing with the present proceeding would only amount to abuse of process of Court.

13. Hence, impugned order of taking cognizance dated 10.06.2015 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in connection with Vigilance Case No. 27 of 1996 corresponding to Special Case No. 26 of 1996 pending before learned Special Judge, Vigilance-I, Patna is

hereby quashed and set aside.

14. Hence, this application stands allowed.

15. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
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