

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59511 of 2023

Arising Out of PS. Case No.-12 Year-2015 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

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Rakesh Srivastava @ Rakesh Kumar Srivastava Son Of Abhay Narayan
Srivastava @ Abhay Narayan Prasad Resident Of Sharada Mission,
Maulagudi, Pradhan Nagar, Ps- Pradhan Nagar, Dist- Darjleeing, West Bengal

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Economic Offence Unit, Patna, Bihar through its S.P. Bihar
3. Md. Kaiser Jamal Son of Md. Jahir Resident of Village- Samestpur, Ps-
Mahnar, Dist- Vaishali

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Kumkum Mukherjee, Advocate Mr. Rajeev Ranjan, Advocate
For the State	:	Mr. Zainul Abedin, APP
For the E.O.U.	:	Mr. Vishwanath Prasad Sinha, Sr. Advocate Ms. Soni Shrivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 29-11-2024

This Court has heard Ms. Kumkum Mukherjee, along
with Mr. Rajeev Ranjan, learned counsel for the petitioner and
Mr. Vishwanath Prasad Singh, learned Senior Advocate assisted
by Ms. Soni Shrivastava, learned Advocate for the Economic
Offence Unit. Learned APP for the State is also present.

2. The petitioner by invoking the inherent jurisdiction
of this Court under Section 482 of the Code of Criminal
Procedure seeking quashing of the First Information Report,
bearing Economic Offence Wings Case No.12 of 2015 dated



26.11.2015 (G.R. Case No. 5719 of 2015) instituted for the offences punishable under Sections 420, 406 and 120B of the Indian Penal Code, presently pending with the Learned Special Court, Economic Offence Wings, Muzaffarpur.

3. The prosecution case as briefly stated in the F.I.R. that on 11.12.2014 one Md. Kaisar Jamal gave a written application to the Inspector General, Economic Offences Unit, Bihar, Patna alleging therein that Sarada Pleasure and Adventure Limited is a Company (hereinafter referred to as 'the Company') and its headquarter is at Siliguri (West Bengal), the branches of which runs at Jandaha (Vaishali), Patna, Chapara, Muzaffarpur, Bhagalpur and Katihar. It is further alleged that the said Company collects monies from peoples through its agents since 2008, but even after maturity it failed to return the money and all the branches are closed. Despite the assurance given by the Managing Director of the Company, when the maturity amount have not been handed over, the customers/people approached Siliguri Headquarter Branch, thereupon they were threatened and thus returned with false promise.

4. On the basis of the aforementioned written application, the Economic Offence Unit, Bihar, Patna lodged the First Information Report, bearing Economic Offence Wings Case



No.12 of 2015 dated 26.11.2015 under the aforementioned Penal provisions of the Indian Penal Code.

5. The learned Advocate for the petitioner primarily set out the facts with regard to the Company and the role of the petitioner as follows; The petitioner is said to be the Managing Director of the Sarda Pleasure and Adventure Limited incorporated under the provisions of the Companies Act, 1956, having its office at Hotel Sarda Compound, Hill Cart Road, Madalguri, P.O. and P.S. Pradhan Nagar, Siliguri, District Darjeeling, West Bengal. The said Company, being a Public Limited Company, can issue redeemable preferential share, debentures with an object to carry on in India and elsewhere the business of contractors, turn-key contractors, designers, architects, decorators, consultants, financiers and brokers of all types of constructions and for development work of roads, bridges, houses, offices, godowns etc.

6. Drawing the attention of the written report, learned Advocate for the petitioner vigorously contended that the written report so filed way back on 11.12.2014, but surprisingly the F.I.R. has been registered after a lapse of 318 days i.e. on 26.11.2015 without there being any explanation for delay in lodging of the F.I.R. The F.I.R. along with the relevant



documents was produced before the learned Chief Judicial Magistrate, Vaishali at Hajipur on 30.11.2015 and thereafter the learned Chief Judicial Magistrate, Vaishali at Hajipur has been pleased to send the case before the learned Additional Chief Judicial Magistrate-IX, Vaishali at Hajipur and again the cause of delay has not been explained. On receipt of the record by the Court of learned Additional Chief Judicial Magistrate-IX, Vaishali at Hajipur, he recorded the statement of some of the victims and then transferred the matter to the learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur. After recording the statement of the victims under Section 164 of the Cr.P.C., the learned court immediately on 17.10.2019 issued Non-Bailable Warrant of Arrest against the petitioner without complying the provisions of the Cr.P.C.

7. In this Regard, learned Advocate for the petitioner contended that while passing the order dated 17.10.2019, the learned Court should have taken into account that Non-Bailable Warrant of Arrest can only be issued if the accused seems avoiding the summons. The Court in the second time should give reasonable time and only in third time when the Court is fully satisfied that the accused is avoiding the Court proceeding intentionally, then the Non-Bailable Warrant of Arrest can be



initiated. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Inder Mohan Goswami & Another vs State Of Uttaranchal & Others**, reported in, **(2007) 12 SCC 1**.

8. The petitioner apprehending his arrest, moved an application for grant of anticipatory bail in Cr. Misc. No. 39323 of 2020 and the same was disposed of by a Coordinate Bench of this Court with observation vide order dated 03.03.2022. In compliance thereof, the petitioner moved before the learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur on various occasions, but the learned Court after hearing declined to entertain the matter and transferred the same to C.B.I., Court, Muzaffarpur, but the C.B.I. Court, Muzaffarpur remitted the matter to the learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur on the lack of jurisdiction. In the aforesaid premise, the petitioner again moved this Court in Cr. Misc. No. 56680 of 2022 wherein this Court vide order dated 15.03.2023 disposed of the application with a direction that the petitioner is required to surrender before the Sub-Judge-I-cum-A.C.J.M.-I-cum-Assistant Sessions Judge-IV-cum-Special Judge, Economic Offence, Patna. Learned Advocate for the petitioner contended that despite the aforesaid order, neither the matter is transferred



to the concerned court as per this direction of the Court nor the prayer of the petitioner, as sought for in this Court, has been considered.

9. Now referring to the impugned F.I.R., it is further contended that the allegation in the F.I.R. is without there being any specification with regard to the alleged occurrence said to have been committed by the petitioner nor during the course of investigation, materials collected by the investigating officer reveal that any offence took place. The F.I.R. is instituted with malafide, based upon false, fabricated and frivolous materials, highly prejudicial to the petitioner's reputation and to settle the personal scores with the petitioner. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of **Randheer Singh Vs. The State of UP & Ors.** [(Cr. Appeal No. 932 of 2021) : **(2021)14 SCC 626**].

10. Ms. Mukherjee further contended that apart from the F.I.R. there is vague and general allegation. It is the fact that the F.I.R. has been instituted before the maturity of the amount. In fact, the petitioner has paid 80% of the value and the informant has already received payment. The document against such payment has also been annexed along with the certificate issued by the Company to the informant. It is also the contention



of the petitioner that irrespective of the fact that the F.I.R. was instituted way back in the year, 2015, but till date the investigation is going on and the charge-sheet is yet to be submitted; and, as such, it is contended that inordinate delay in completing the investigation is a good ground to quash the F.I.R. In support of the aforesaid contention, reliance has also been placed on a judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Sarwan Singh**, reported in **AIR 1981 SC 1054 : (1981) 3 SCC 34**.

11. While summarizing the aforementioned submissions, learned Advocate for the petitioner has further taken this Court through the order passed by the Securities and Exchange Board of India Under Section 11, 11(4), 11(A) and 11(B) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'the SEBI') in respect to the petitioner and its Company to the effect that the SEBI admitted that the Company has refunded Rs.10.2 Crores. The remaining liability was only Rs.11 Crores, which would be paid by December, 2017 in different installments.

12. On the other hand, Mr. Sinha, learned Senior Advocate representing the Economic Offence Unit has contended that the petitioner is facing prosecution in various



cases of identical nature in the State of Bihar, West Bengal and at Jharkhand for deceiving public at large. The F.I.R. has been instituted at the instance of informant/opposite party no.3 for not making repayment of the investment made by the customers, including the informant. Apparently, the case of cheating and fraud is instituted against the petitioner and others through the Company, which were doing the business of Non-Banking Financial Institution without Regulatory permission as well as the permission from the Reserve Bank of India. The victims have lost their savings by investing in such company and the petitioner is the Managing Director of the Company. Drawing the attention of this Court to the statement of the victims recorded under Section 164 of the Cr.P.C., it is vigorously contended that all of them have supported the prosecution case and deposed against the petitioner. The company was not authorized to accept the deposits from the depositors as a Non-banking Financial Company. Admittedly, the petitioner being the Director of the Company floated the company for no banking purposes and extracted money from common man and thereafter usurped the same. The SEBI intervened in the matter and passed adverse order against the petitioner as well as other Directors and representatives, which is self-explanatory.



13. By making the aforementioned submissions, learned Senior Advocate thus contended that the F.I.R. could not be quashed at this stage when the materials collected during the course of investigation explicitly suggest the involvement of the petitioner and the charge-sheet is likely to be filed in near future.

14. Reliance has also been placed on the judgment rendered by the Hon'ble Supreme Court in the case of **State of Haryana and Ors. vs Ch. Bhajan Lal and Ors.**, reported in, **AIR 1992 SC 604**. Further reliance has also been placed on the decisions in the case of **Sanapareddy Maheedhar Seshagiri and Another vs State of Andhra Pradesh and Another**, reported in, **(2007) 13 SCC 165** as also the decision rendered in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.**, reported in, **2021 (4) BLJ SC 135**.

15. This Court has anxiously heard the learned Advocate for the respective parties and also perused the materials available on record. Before parting with the case, it would be apt and proper to quote the relevant paragraph of the decision of the Hon'ble Supreme Court in the case of **Ch. Bhajan Lal** (supra) wherein the Hon'ble Supreme Court has painstakingly enunciated the categories of cases by way of



illustration wherein the extraordinary power under Article 226 of the Constitution or inherent power under Section 482 of the Code can be exercised. Para. 102 of the judgment is quoted hereinbelow:

“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 information 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 person 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.

16. The Hon'ble Court in catena of its decisions made it clear that interference by the Court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. In the case of *Abdul Rehman Antulay Vs. R.S. Nayak*, reported in (1992) 1 SCC 225 while interpreting the scope of Article 21 of the Constitution, the Court held that every citizen has a right to speedy trial of the case pending against him. It is in the interest of all concerned that guilt or innocence of the accused



is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, including the stage of investigation, enquiry, trial, appeal, revision and retrial. While determining the alleged delay, the court has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a presentive proof of prejudice.

17. The Hon'ble Court further held that the cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the appropriate authorities concerned are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the accused in this case.

18. In the case of *Vakil Prasad Singh Vs. State of Bihar*, reported in, (2009) 3 SCC 355, the Hon'ble Supreme Court while considering the question of quashing of criminal proceeding due to delay has held that speedy investigation and trial, both are enshrined in the Cr.P.C. It is observed that inordinate delay in itself may not be a ground for quashing of a



criminal case. Unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.

19. The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also, therefore, depend on various factors including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defence of the accused or whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused.

20. In the case of *State of A.P. Vs. P.V. Pavithran*, reported in, (1990) 2 SCC 340, the Hon'ble Supreme Court while considering the identical matter has held that there are offences of grave magnitude such as diabolical crimes of conspiracy or clandestine crimes committed by members of the underworld with their tentacles spread over various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes and bringing the culprits to book. Therefore, it is not possible to formulate inflexible guidelines or rigid principles of uniform application for speedy investigation or to stipulate any arbitrary



period of limitation within which investigation in a criminal case should be completed.

21. The inherent power conferred under Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of great magnitude and cannot be seen in their true perspective without sufficient material, is ruled by the Hon'ble Supreme Court in the case of *Janata Dal Vs. H.S. Chowdhary*, (1992) 4 SCC 305.

22. In the case of *Sajjan Kumar Vs. CBI*, reported in (2010) 9 SCC 368, the Hon'ble Supreme Court in para. 39 held that in the case in hand, though delay may be a relevant ground, in the light of the materials which are available before the Court through CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. As stated earlier, those materials have to be tested in the context of prejudice to the accused only at the trial.

23. In the case of *NOIDA Entrepreneurs Association*



Vs. NOIDA & Ors., reported in, **(2011) 6 SCC 508** even the delay of 17-18 years was held not to be adequate to stop criminal proceedings having regard to the gravity of the offence. The Hon'ble Supreme Court in para. 21 and 42 observed as follows:

“21. Thus, it is evident that question of delay in launching criminal prosecution may be a circumstance to be taken into consideration in arriving at a final decision, but it cannot itself be a ground for dismissing the complaint. More so, the issue of limitation has to be examined in the light of the gravity of the charge.

42. In view of the above, we are of the considered opinion that these allegations being of a very serious nature and as alleged, Respondent 4 had passed orders in colourable exercise of power favouring himself and certain contractors, require investigation. Thus, in view of the above, we direct CBI to have preliminary enquiry and in case the allegations are found having some substance warranting further proceeding with criminal prosecution, may proceed in accordance with law. It may be pertinent to mention that any observation made herein against



Respondent 4 would be treated necessary to decide the present controversy. CBI shall investigate the matter without being influenced by any observation made in this judgment”

24. In view of the rulings, as noted hereinabove, it is axiomatic that mere delay in completion of proceeding may not be by itself a ground to quash the proceeding where the offences are grave, but nonetheless the Court have regard to the conduct of the parties, nature of offence and the extent of delay in the facts of the case quashed the proceeding in exercise of jurisdiction under Section 482 of the Cr.P.C.

25. This Court is also of the considered view that the F.I.R. is not an encyclopedia containing all the necessary relevant facts in detail, rather it is only an information disclosing the facts of a cognizable offence, which set the criminal law into motion. The materials available on record clearly suggests that the crime, in question, spread in various districts and there are large number of persons, who have been made victim of cheating and fraud.

26. It is worth noticing that the petitioner is facing various identical nature of criminal cases and they all relate to cheating and fraud. Two of the cases are also being instituted by



the CBI. Admittedly, the petitioner is the Director of Sarda Pleasure and Adventure Limited and there is specific allegation of defrauding the customers by luring them to invest the money in order to get higher interest and refund of the money contrary to the Reserve Bank of India Regulation. During the course of investigation, it has come that large number of persons have lost their saving by investing in such Company of which the petitioner is the Managing Director.

27. In view of the discussions made hereinabove and the materials collected during the course of investigation, this Court does not find any substance in the present quashing application. The petitioner failed to make out any case for quashing of the F.I.R.

28. The quashing application sans any merit, fit to be dismissed.

(Harish Kumar, J)

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