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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 04.04.2024
Pronounced on: 23.04.2024

+ CRL.REV.P. 242/2024, CRL.M.A.Nos.5506-5508/2024

INDERJIT SINGH

..... Petitioner

Through: Mr. Shivendra Singh and Mr. Bikram
Dwivedi, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION
& ANR.

..... Respondents

Through: Mr. Anupam S. Sharrma, Ms.
Harpreet Kalsi, Mr. Prakarsh Airan,
Mr. Abhishek Batra, Mr. Ripudaman
Sharma, Mr. Vashisht Rao, Mr.
Syamantak Modgill and Mr. Nishant
Kandpal, Advs.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed against the impugned order dated 07.02.2024 whereby the prayer of the petitioner / accused no. 3 to suspend or stay the proceedings / trial of the case against him, was rejected.
2. A specific prayer has also been made in the present petition to stay the trial *qua* the petitioner in CC No. 213/2019 pending before the learned Special Judge, CBI-15, Rouse Avenue District Court, New Delhi so long as



it remains stayed *qua* accused no. 1 (S.S. Ahluwalia / respondent no. 2).

3. The contention of the learned counsel appearing on behalf of the petitioner is that 04 persons *viz.*, (i) Sh. S.S. Ahluwalia (A-1), (ii) Sh. V. Bhaskaran (A-2), (iii) Sh. Inderjit Singh (A-3) [petitioner herein] and (iv) Sh. Nyamo Lotha (A-4), were arraigned as accused and charge sheeted on 10.04.1992 for commission of offences under Section 120-B read with Sections 419/420/467/468/471 IPC read with Section 5(1)(e) & 5(2) of the Prevention of Corruption Act, 1947, and substantive offences thereto.

4. He submits that the co-accused, namely, V. Bhaskaran (A-2) has become approver *vide* order dated 27.09.1996 whereas proceedings *qua* accused Nyamo Lotha (A-4) have already abated on account of his death.

5. Insofar as accused S.S. Ahluwalia (A-1) is concerned, an application was filed by his counsel under Section 105 of the Mental Healthcare Act, 2017 read with Section 329 CrPC through his *paikar* with a prayer that the said accused is not in a fit state of mind to stand trial, therefore, further trial of the case be postponed till the health of the said accused improves, or to pass such other order which the court deems fit.

6. Considering the observations of the treating doctor of co-accused S.S. Ahluwalia (A-1), the learned Trial Court *vide* order dated 07.11.2023 had directed the Director, IHBAS Hospital to constitute a Medical Board for evaluating the current medical condition of the said accused, more particularly on the aspects mentioned in the said order.

7. After the receipt of report from the Medical Board of IHBAS consisting of 05 members, the court analysed the same and found that S.S. Ahluwalia (A-1) is suffering from Moderate Dementia with Atypical Parkinson's disease, which is progressive in nature and not likely to



improve, therefore, the said accused is not in a position to take a decision and accordingly, not fit to stand trial.

8. Consequently, in view of Section 329 CrPC read with Section 105 of the Mental Healthcare Act, 2017, the trial *qua* accused S.S. Ahluwalia (A-1) was postponed. However, the *paurokars* of the said accused were directed to get him examined after every two months in IHBAS and a direction was given to the Medical Superintendent, IHBAS to submit his report to the learned Trial Court regarding improvement, if any, in the condition of accused, after intervals of every two months till further directions.

9. The learned counsel appearing on behalf of the petitioner submits that out of the 04 accused persons who were charge sheeted, Nyamo Lotha (A-4) has already expired, another accused V. Bhaskaran (A-2) has become approver, thus, the trial was proceeding against only two accused persons i.e. the petitioner herein (A-3), as well as, S.S. Ahluwalia (A-1).

10. He submits that in terms of order dated 23.02.2008 passed by the learned Trial Court, charges under Section 120B read with Section 419/420/467/468/471 IPC read with Sections 5(1)(e) and 5(2) of the Prevention of Corruption Act, 1947 were framed against accused S.S. Ahluwalia (A-1) and Inderjit Singh (A-3) i.e. the present petitioner and substantive charges were framed under Section 419/420/467/498/471 IPC, as well as, under Sections 5(1), 5(1)(e) and 5(2) of the Prevention of Corruption Act, 1947 only against accused S.S. Ahluwalia (A-1).

11. The contention of the learned counsel is that since in terms of the order dated 16.01.2024, accused S.S. Ahluwalia (A-1) has been declared “*unfit to stand trial*”, therefore, the trial against the said accused has been suspended whereas Nyamo Lotha (A-4) has expired, therefore, no finding of



guilt can be recorded against these accused persons.

12. He submits that the petitioner having been charged for the offences under Sections 419/420/467/468/471 IPC read with Section 5(1)(e) & 5(2) of the Prevention of Corruption Act, 1947, only with the aid of Section 120B IPC, the trial cannot proceed solely against the present petitioner (A-3) as the pronouncement of his guilt is dependent upon the finding of guilt in the substantive offences against S.S. Ahluwalia (A-1) against whom the trial has been postponed considering his medical condition.

13. It is accordingly, urged by the learned counsel that the trial is ought to be stayed against the present petitioner and it cannot proceed in the absence of continuation of trial against the accused who has been charged with the substantive offence.

14. In support of his submission, the learned counsel has relied upon the following decisions:

- i) ***Haradhan Das vs. State of West Bengal: 2019 SCC OnLine Cal 9240***
- ii) ***Manoj Kumar Soni vs. State of Madhya Pradesh: 2023 SCC OnLine SC 984***

15. Next, it has been argued by the learned counsel for the petitioner that since the learned Trial Court has found that co-accused S.S. Ahluwalia (A-1) is not fit to stand trial, the court ought to have examined the record of evidence produced by the prosecution in terms of Section 329(2) CrPC to find out whether any *prima facie* case is made out against the co-accused S.S. Ahluwalia (A-1) and in the event of court finding that no *prima facie* case is made out against him, the said accused ought to have been discharged. He submits that taking the said course was mandatory and the discharge of co-accused S.S. Ahluwalia (A-1) would enure to the benefit of



the petitioner as well.

16. *Per contra*, the learned counsel appearing on behalf of the respondent / CBI contends that the argument under sub-section (2) of Section 329 of the Criminal Procedure Code is only available to co-accused S.S. Ahluwalia (A-1), who has been declared unfit to stand the trial, inasmuch as he only could contend that no *prima facie* case is made out against him on the basis of the record of evidence produced by the prosecution and the said argument is not available to the present petitioner who does not suffer from any disability to defend the trial.

17. He submits that notwithstanding the postponement of trial *qua* co-accused S.S. Ahluwalia (A-1), the proceedings of trial will have to continue against the present petitioner. In support of his contention reliance has been placed on the decision of this court in ***Natwar Rateria Vs. CBI, 2015 SCC OnLine Del 7458***.

18. I have heard the learned counsel for the petitioner, as well as, the learned counsel for the respondent / CBI and have perused the record.

19. The short question which arises for the consideration of this court is that upon stay of trial proceedings against co-accused S.S. Ahluwalia (A-1) on the ground that he is unfit to stand the trial, whether the trial is liable to be stayed against the present petitioner, who is the sole accused left to face the trial.

20. The procedure to be followed by the court during trial when it appears to the Magistrate or Court of Sessions or when they are informed that the person being tried is of unsound mind, has been prescribed under Section 329 CrPC, therefore, relevant would it be to reproduce Section 329 CrPC for ready reference, which read as under:



“329. Procedure in case of person of unsound mind tried before Court.

*(1) If **at the trial** of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently **incapable of making his defence**, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.*

[(1-A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of-

(a) head of psychiatry unit in the nearest Government hospital; and

(b) a faculty member in psychiatry in the nearest medical college.]

*(2) If such Magistrate or Court is informed that the person referred to in sub-Section (1-A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused **incapable of entering defence** and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in*



the manner provided under Section 330:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(3) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with Section 330.”

(emphasis supplied)

21. A bare perusal of sub-section (1) and (2) of Section 329 CrPC shows that both operate at different stages of trial. The provision of sub-section (1) of Section 329 CrPC comes into play prior to the conclusion of prosecution evidence and this become apparent from the use of expression “*if at the trial*” and “*incapable of making his defence*”. At the said stage of the trial, if the court comes to the conclusion that owing to unsoundness of mind an accused person is incapable of defending himself in a criminal trial and the court is satisfied of the said fact based on the medical and other evidence produced before it, the court will record a finding to that effect and postpone further proceedings in the case.

22. A reading of sub-section (2) of Section 329 CrPC entails that the same operates at a stage after the prosecution evidence has been closed and the stage of entering the defence of the accused has reached. This becomes apparent from the use of expression “*unsoundness of mind renders the accused incapable of entering defence*”. At this stage if the accused is found incapable to enter defence owing to the unsoundness of mind, the court is under obligation to examine the record of evidence and hear the advocate of



the accused, and may discharge the accused if the court finds that no *prima facie* case has been made out, instead of postponing the trial. The proviso to sub-section (2) of Section 329 CrPC deals with the converse situation where the court on examining the record of evidence finds that the *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, then the court shall postpone the trial for such period as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

23. Sub-section (3) of Section 329 CrPC deals with the situation where the accused suffers from mental retardation, which is not the case in the present matter.

24. It also needs to be observed that Section 329 CrPC operates only at the stage of trial and not prior thereto. It is trite that the “trial” is the stage that commences upon charges being framed.¹

25. The provision of Section 329(1) CrPC and proviso to sub-section (2) of Section 329 CrPC speaks of postponement of further proceedings or postponement of trial. However, it does not clarify whether such proceeding or trial is to be postponed only *qua* the accused who is of unsound mind or the same is to be postponed in entirety. However, to find an answer to this moot question, reference may be had to Section 299 CrPC which permits the court to proceed with the trial against one or more accused while other remains absent and there is no immediate prospect of their attendance being procured who have absconded. Likewise, Section 317 CrPC provides that trial can be held in the absence of accused where his personal appearance is

¹ (2014) 3 SCC 92: Hardeep Singh vs. State of Punjab.



not necessary or he persistently disturbs the proceedings in Court. The Court is also authorised to try such accused separately if his personal attendance is considered necessary. Thus, the scheme of the Code provides for splitting of trial.

26. Even otherwise Section 329 CrPC provides the procedure to deal with the accused of unsound mind during the trial. It cannot by stretch of imagination affect the entire trial insofar as it relates to other accused. Once the charge has been framed, the logical conclusion of the trial is either in the acquittal or conviction of the accused. The postponement of trial *qua* the accused, who are capable to making their defence or entering upon defence during the trial, is not a situation contemplated by Section 329 CrPC nor the right to speedy trial of the accused, other than the one who is incapacitated by unsoundness of mind, can be prejudiced by stalling the entire trial. Further, right to speedy trial is not an exclusive right of the accused, but an obligation of the Court towards society in general, and the victim in particular², therefore, for this reason as well, the postponement of trial in entirety will not be in the interest of justice.

27. This Court is supported in its view by the decision of the Kerala High court in *State of Kerala vs. Hariharan Pillai: 1983 SCC OnLine Ker 155*, where dealing with similar situation, the court observed as under:

“5. The Code does not contain any specific provision relating to cases where one or some only among several accused are, by reason of unsound mind, incapacitated from facing trial. Obviously, no such specific provision has been made because the relevant sections in Chapter XXV of the Code are capable of providing guide-lines in such cases also. S. 329 of the Code

² State of Rajasthan v. Asharam @ Ashumal, AIR 2023 SC 2228



contemplates postponement of “further proceedings in the case”. S. 332 contemplates a situation where the trial shall proceed. Obviously, these sections can relate only to the case in so far as it relates to the accused who, by reason of unsoundness of mind, is incapable of making his defence. It cannot affect or relate to the case in so far as it concerns the other accused. Any other construction would lead to very serious consequences for the accused who are not so incapacitated. The necessary implication of these provisions is that the case can proceed against the remaining accused. Any other interpretation would create untold hardship and prejudice to such accused and complications in relation to court process. There can be no doubt that the learned Sessions Judge was correct in his decision to proceed with the trial of the case in relation to accused other than the 5th accused. Necessarily, the case against the 5th accused must be given a separate number. I am supported in this view by the decision of the Bombay High Court in Narayanrao Madhora Daiarao v. The State of Maharashtra (Vol. 70 B.L.R. 425).”

(emphasis supplied)

28. Similar view has been taken by the Gauhati High Court in ***Bhanumati Devi vs. State of Tripura: (2002) 1 Gauhati Law Reports 40***, where it was observed as under:

“5. To decide whether a separate trial for one or other accused is permissible having kept the trial postponed regarding others, it is to be examined whether in a criminal trial pertaining to commission of offence the case is to be tried or the accused is tried? In case it is found that a case is tried then it may not be possible to split up the trial, but if the converse is found then as and when it becomes expedient to do so, a separate trial for an accused would be obviously permissible having kept the trial adjourned sine die against other. The provisions laid down under Section 228(2) CrPC so far it relates to Sessions trial, Section 240(2) CrPC concerning warrant cases contemplate that after framing of charge



against an accused person, the Court is required to ask the accused “whether he pleads guilty of the offence charged or claims to be tried”. The provisions of section 300(1) Cr PC prohibit the second trial of any accused “who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence”. The provision of section 299(1) of Cr PC authorises the Court to proceed with the trial against one accused while other remains absent and there is no immediate prospect of his attendance being procured.”

29. In ***Natwar Rateria vs. CBI: 2015 SCC OnLine Del 7458***, the controversy that arose was akin to the issue involved in the present case. The question that was adverted to in the said decision was whether the proceedings of trial could continue against accused who has been charged only for the offence of conspiracy with co-accused who has already passed away and the proceedings *qua* him have abated. A coordinate Bench of this Court answered the said question in the following terms:

“20. The aforesaid question has to be considered in the light of the fact that A-1 was neither discharged nor acquitted after conclusion of the trial but proceedings had to be abated against him due to his death. In this backdrop the answer to the above question has to be in the negative. I do not see any force in the first and foremost submission made on behalf of the petitioner that ‘abatement’ has the effect of acquittal due to which it would automatically lead to acquittal of sole surviving co-accused charged with the offence of conspiracy. Even if it be presumed, for the sake of argument, that the abatement has the effect of acquittal of an accused who has passed away, it does not automatically lead to the acquittal of sole surviving co-accused. The reason is quite obvious. Whenever an accused expires during pendency of trial and proceedings are abated against him, it is not left open for the prosecution to level charges against such an accused by producing its witnesses during trial. It goes without saying



*that everyone is presumed to be innocent till proved guilty as per well settled cardinal principles of criminal jurisprudence. Once the accused is no more to face the trial till the end, his conclusion of guilt or otherwise cannot be arrived at by the Court trying said accused. Thus, benefit is extended in a way to such an accused by terming 'abatement' of proceedings against him as having an effect of acquittal. However, such abatement has to be purely due to death of the accused. Precisely for these reasons, the acquittal, if any, of accused who is dead is in a technical sense. **Thus, the benefit of abatement of proceedings cannot be extended in favour of co-accused even if he remains to be the sole surviving accused after the death of the accused facing charge of conspiracy.***

*21. All the aforesaid judgments relied upon by learned counsel for petitioner are entirely distinguishable from the facts and circumstances of the present case and thus, same cannot be pressed into service for his benefit. **In all these said judgments one out of the two or all but one accused were either discharged or had been acquitted on merits after complete trial. In this background, it has been held that since there must be two or more persons for existence of charge of conspiracy and charge of conspiracy could not stand against remaining one accused, the offence of conspiracy cannot stand against sole surviving accused either.***

22. In the instant case, there is no finding on merits that the offence of conspiracy is not proved against A-1 (since expired) so as to extend the benefit of view taken in the judgments relied upon by the petitioner to him. Rather, the position is otherwise. After both the accused i.e. A-1 and the petitioner herein were charge-sheeted for conspiracy, separate charge for the offence of conspiracy was framed against both of them. Both the accused were put to trial when A-1 died during trial and proceedings had to be abated qua him. In such a situation, the prosecution deserves to be afforded an opportunity to produce its witnesses for proving the charge of conspiracy against the petitioner. The Court



would be well within its right to pronounce the verdict against the petitioner after holding full trial against him. I concur with the view taken by the Bombay High Court in the matter of 'Pradumna Shriniwas Auradkar v. State of Maharashtra' (Supra)."

(emphasis supplied)

30. For the aforesaid reasons this Court is not persuaded to concur with the view taken by the Calcutta High Court in **Haradhan Das** (*supra*) on which the reliance has been placed by the learned counsel for the petitioner.

31. The reliance placed by the learned counsel for the petitioner on the decision of the Hon'ble Supreme Court in **Manoj Kumar Soni** (*supra*) is also misplaced inasmuch as in the said decision it was laid down that out of five accused persons only one had been convicted for criminal conspiracy under Section 120B IPC and in this backdrop it was observed that one person cannot alone conspire and the offence of criminal conspiracy is committed only when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. However, in the present case, the petitioner is not the only person who has been charged with an offence of conspiracy nor all other accused were either discharged or acquitted after complete trial.

32. The submission of the learned counsel that under sub-section (2) of Section 329 CrPC it was obligatory on part of the Trial Court to examine the record of evidence produced by the prosecution for ascertaining whether any *prima facie* case is made out against co-accused S. S. Ahluwalia (A-1), is also misconceived. As observed in the earlier part of the judgment sub-section (2) of Section 329 CrPC operates only when the prosecution has



produced the entire evidence in its support or in other words the prosecution has closed the evidence and the stage has reached to call upon the accused persons to enter their defence. However, in the present case, the evidence of the prosecution has not yet concluded and the stage contemplated under sub-section (2) of Section 329 CrPC has yet not reached in the trial. Therefore, there was no occasion for the learned Trial Court to examine the record of evidence to find out whether any *prima facie* case is made out against the accused S.S. Ahluwalia (A-1). The learned Trial Court has rightly passed the order under sub-section (1) of Section 329 CrPC and postponed the trial *qua* aforesaid accused.

33. In view of the aforesaid discussion, there is no ground to interfere in the impugned order passed by the learned Trial Court. Accordingly, the Criminal Revision filed by the petitioner is dismissed.

34. All the pending applications are also disposed of.

35. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

APRIL 23, 2024

N.S. ASWAL/MK