

(1990) 03 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Nos. 6167-M & 6168 of 1989 (O&M)

Anand Parkash, now Superintending Engineer, Haryana State
Agricultural Marketing Board

APPELLANT

Vs

State (U.T.Chandigarh) and anr.

RESPONDENT

Date of Decision : 28-03-1990

Acts Referred:

Citation : (1990) 2 CurLJ 7 : (1990) 2 RCR(Criminal) 93

Hon'ble Judges : S.S.Grewal, J

Advocate : Rajiv Vij, Anand Swaroop, P. S. Patwalia, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) relates to quashment of the impugned First Information Report No. 344 dated 27.7.1979 under sections 420/468/470/120B IPC and section 5(1) of the Prevention of Corruption Act, registered at Police Station, Sector 34, Chandigarh and subsequent proceedings taken thereunder.

2. In brief, according to the allegations in the impugned First Information Report, quotations for the purchase of 20 weighbridges were obtained by Haryana Agricultural Marketing Board, (hereinafter referred to as the Board) from firm M/s Avery India Ltd., firm Bird & Company and firm M/s George Sholter. The quotation at the rate of Rs. 72,000/ to complete 20 weighbridges, offered by M/s Bird & Company, being the lowest, was approved by Shri Munshi Ram IAS the then Chairman of the Board. No quotation was actually obtained from Firm M/s George Sholter India Ltd. and it was disclosed that the quotation purported to have been offered by this firm did not bear the signatures of their agent Shri A.K. Rai, rather it was found to be in hand of Shri K. K. Talwar an agent of M/s Bird & Company. The present petitioner who was working as Superintending Engineer (P) of the said Board knew that the said quotation was fictitious. Firm. M/s AOne Sales Company, Sonapat had sent its quotation to the Board which was

even lowest, but that quotation was allowed to disappear with dishonest intention, and in this too the present petitioner had a hand. Shri Munshi Ram, Chairman of the Board unauthorisedly arranged to get issued the cheque of advance of Rs. 2.5 lacs in the name of firm M/s Bird & Company instead of a payee account cheque by exercising undue pressure on the subordinates working under him. The same cheque was obtained by Shri J.R. Sharma an agent of firm M/s Bird & Company. The amount of the cheque was received by Shri Onkar Mal Mittal through the account of the firm New Bharat Steel Industries, Hissar in the Central CoOperative Bank, Hissar. From the preliminary enquiries, it was established that in pursuance of a criminal conspiracy, Shri Munshi Ram aforesaid and the present petitioner, who were the officers of the Board, and also public servants, joined hands with Shri K.K. Talwar and Shri J.R. Sareen agents of the firm M/s Bird & Company and Shri Onkar Mai Mittal, resident of Hissar and worked together with dishonest intention with the object. to commit cheating and forgery and to commit corruption through Government employees, resulting in heavy financial loss to the Board, and illegal pecuniary advantage to the accused which was caused by abusing their position as a public servant. Quotations were forged and used with dishonest intention, and, thereby the Board was cheated and the advance amount was fraudulently paid. Since the offences were committed in Sector 22 Chandigarh, a case was got registered, at Chandigarh.

3. Only the Union Territory of Chandigarh has, cared to file, reply in this case.

4. The learned counsel for the parties were heard.

5. Admittedly, the case against the Petitioner and his other coaccused was registered as far back as 2771979. It was not disputed that vide Memo No. 85/24576 dated 1391985, the Home Secretary, Chandigarh Administration, had written to Inspector General of Police, Union Territory, Chandigarh, informing the latter that the Union Territory of Chandigarh had decided to withdraw the case from prosecution relating to the impugned FIR as public purpose perhaps would be better served by withdrawing the case from the prosecution. Subsequently, as is apparent from letter (copy annexure N), dated 2941986, Home Secretary, Union Territory, Chandigarh, communicated to Inspector General of Police, Union Territory, Chandigarh that the administration was not inclined to withdraw the present case from prosecution, or sending the case as untraced. It is a case in which forged tenders are alleged to have been entertained and the case needs to be pursued vigorously till the completion of the investigation and, further request was made to expedite the matter and submit the challan in the Court, without any further loss of time. Munshi Ram ExChairman of the Board has already died, and there is no material on the record that no sanction to prosecute the present petitioner as an accused, being public servant, has been obtained so far. Thus, in spite of the fact that the First Information Report in this case was lodged more than 101/2 years back, no challan against the petitioner, or their other coaccused has so far been presented in the Court. This clearly is in violation of the constitutional guarantee of a speedy trial contemplated under Article 21 of the

Constitution, particularly when inordinate delay of more than 10 1/2 years, referred to above, does not arise from the default of the petitioner, nor the same is occasioned by any extraordinary or exceptional reason, as held in *Amarjit Singh Dhingra Executive Engineer v. State of Punjab*, 1989(2) Recent Criminal Reports 193 and *Amar Nath and others v. the State of Punjab*, 1988(2) Chandigarh Law Reporter 419, wherein reliance was placed on Full Bench authority of Patna High Court in *Madheshwardhari Singh and another v. State of Bihar*, 1990(3) RCR(Crl.) 302 (Patna) : 1986 CrL LJ 1771 and it was held that the right of a speedy public trial is now an inalienable fundamental right of a citizen under Article 21 of the Constitution. It has further been ruled that a callous and inordinately prolonged delay of seven years or more (which does not arise from the default of the accused, or is otherwise not occasioned by any extraordinary or exceptional reason) in investigation and original trial for offences other than capital one plainly violates the constitutional guarantee of a speedy public trial under Article 21 of the Constitution.

6. In order to explain the delay, it was submitted on behalf of the State firstly that the delay in holding the trial was caused by the delaying tactics adopted by the accused themselves, because either the accused remained at large, or they did not cooperate in investigation; secondly that Om Parkash Mittal accused declined to give his specimen signatures only on 24/5/1988, thirdly that more time was consumed in investigation of this case, because voluminous evidence had to be collected, and fourthly that sufficient time was also needed for obtaining sanction of prosecution of the petitioner from the competent authority. This argument, in the circumstances of the present case, would not constitute plausible explanation for condonation of inordinate delay of more than 10 1/2 years in presenting the challan.

7. The facts and the circumstances of the case do not warrant that voluminous evidence was to be collected by the investigating agency. No proceedings under sections 82 or 83 of the Code of Criminal Procedure were initiated, nor any of the accused was got declared as proclaimed offender. The petitioner is a public servant and is stated to have been attending his office regularly. There does not seem to be any difficulty for the investigating agency, either to procure the presence of the petitioner or his other coaccused, for the purpose of investigation. In case the investigating agency had acted with due diligence, the investigation in the present case was likely to be completed in a much smaller time and would not unnecessarily prolong for a span of over ten years. It is true that the delay in presenting the challan may also be due to the time consumed by the competent authority to grant sanction for prosecution of the petitioner. The fact remains that in spite of the inordinate delay of more than 10 1/2 years the investigating agency has not been able to present the challan in the Court against petitioner or his other coaccused. The inordinate delay does not arise from the default of the petitioner or his other coaccused, nor the same has been occasioned by any extraordinary or exceptional reasons in the investigation of the case. Rather inordinate and prolonged delay of 10 1/2 years seems to be due

to fault of the investigating agency, as well as due to the fault of the competent authority which failed to make up its mind in time to grant sanction for prosecution of the accused. All these circumstances taken together clearly indicate that the constitutional guarantee of a speedy trial of the petitioner contemplated under Article 21 of the Constitution has been violated. The argument advanced on behalf of the respondents is hardly tenable.

8. The other arguments advanced on behalf of the respondents that there is no bar under section 467 Cr.P.C. for taking cognizance of the offences relating to the impugned first information report as the punishment in respect thereof exceeds three years, is hardly tenable, in view of the facts and circumstances of the case referred to above. Nor such an argument can in any manner be considered as plausible explanation for inordinate delay of more than 10 1/2 years in presenting the challan on the basis of the impugned First Information Report.

9. For the foregoing reasons, the impugned First Information Report and the consequent proceedings taken thereunder against the petitioner are directed to be quashed. This petition is accordingly allowed.