

(2013) 11 P&H CK 0239

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No's. 47508-09 of 2013 in Criminal Revision
No. 2639 of 2013

Justice Nirmal Yadav (Retd.)

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0239

Hon'ble Judges : Naresh Kumar Sanghi, J

Bench : Single Bench

Advocate : S.K. Garg Narwana, assisted by Mr. J.S. Yadav and Mr. Vishal Garg,
for the Appellant;

Judgement

Naresh Kumar Sanghi, J.

CRM-47508 of 2013

Prayer in this application is for placing on record the document (Annexure A-1).

Allowed as prayed for.

Document (Annexure A-1) is taken on record.

CRM-47509 of 2013

1. The present application u/s 482, Cr.P.C. read with Article 227 of the Constitution of India has been filed with a prayer to stay the further proceedings pending before the Court of Ld. Special Judge, CBI, Chandigarh, in a case arising out of FIR No. RC AC2 2008 A 004 dated 28.08.2008. The petitioner is a former Judge of this Court. A Peon of another the then sitting Judge of this Court, lodged a complaint with the Chandigarh Police, on the basis of which, FIR No. 250 of 2008 for the offences punishable under Sections 11 and 12 of the Prevention of Corruption Act, 1988 and Sections 120B, 192, 196, 199 and 200, IPC, was registered at Police Station, Sector 11, Chandigarh, against the

petitioner and few others. The said case was transferred to the CBI, pursuant to the demi-official letter dated 26.08.2008 from the then Administrator of UT, Chandigarh. The matter was investigated by the C.B.I and after completion of the investigation, it filed a closure report dated 17.12.2009 before the learned Special Judge, C.B.I. Court, Chandigarh, on the premise that no sanction for prosecution of the petitioner was received.

2. After examining the closure report, learned Special Judge, CBI Court, Chandigarh, refused to accept the same on 26.03.2010 and directed further investigation of the case. The C.B.I carried out further investigation and in the meantime the sanction for prosecution of the petitioner in terms of Section 19 of the Prevention of Corruption Act was received from the President of India. Resultantly, the charge-sheet was presented before the learned court of Special Judge, C.B.I. Court, Chandigarh.

3. Learned Special Judge, C.B.I. Court, Chandigarh, took the cognizance and ordered the summoning of the petitioner and her co-accused. The petitioner challenged the different orders at different levels but could not succeed. The learned trial court vide its detailed order dated 31.07.2013 ordered that the petitioner be charge-sheeted for the offence punishable u/s 11 of the Prevention of Corruption Act, 1988, while her co-accused were ordered to be charge-sheeted for different offences enshrined in the Prevention of Corruption Act and the Indian Penal Code.

4. Vide Criminal Revision No. 2639 of 2013, the petitioner challenged the order of framing of charges. Criminal Misc. No. 37749 of 2013 was also filed with the said criminal revision in terms of Section 482, Cr.P.C. read with Article 227 of the Constitution of India for grant of stay of the further proceedings of the case pending before the learned trial court.

5. After hearing the learned counsel for the petitioner, this Court on 13.09.2013 passed the following order:-

Requires thorough consideration.

Admitted.

Lower Court's record, complete in all respects, be requisitioned.

List within three months for final hearing.

6. The original record was received from the learned trial court. However, in view of the order dated 08.12.2010 of the Administrative Committee of this Court, the photostat copies of the original record received from the learned trial court was retained by the Registry of this Court and the original record was remitted to the learned trial court. After receipt of the original record, the learned Trial Judge issued notices to the petitioner and the other accused to appear and ultimately vide order dated 11.11.2013, the learned trial Judge ordered that the formal charges would be framed on 26.11.2013. Feeling aggrieved of the said order, the

petitioner approached this Court vide impugned criminal misc. petition for stay of the proceedings before the learned trial court.

7. When the present application for grant of stay came up for hearing before this Court on 19.11.2013, then the learned counsel for the petitioner was confronted with the following propositions:-

(i) The order for framing of charges had already been passed and on 26.11.2013 only formal charges are to be framed. The criminal revision petition challenging the order of framing of charges has been admitted by this Court vide order dated 13.09.2013 and it was ordered that the petition be listed for final hearing within three months, in that eventuality, if no stay is granted, the petitioner is not likely to be prejudiced.

(ii) In view of Clause (c) sub-section 3 of Section 19 of the Prevention of Corruption Act, no court can stay the proceedings of a case arising out of the Prevention of Corruption Act, 1988.

(iii) Hon"ble the Supreme Court in Satya Narayan Sharma Vs. State of Rajasthan, held that on any ground Court should not stay the proceedings arising out of the Prevention of Corruption Act.

8. The learned Senior counsel prayed for an adjournment to address the arguments and hence the matter was adjourned for today.

9. Learned Senior counsel submits that once the criminal revision petition has been admitted by this Court, it means the balance of convenience lies in favour of the petitioner and if the proceedings before the learned trial court are not stayed, in that eventuality, very purpose of filing of this criminal revision petition shall be frustrated; that the criminal revision petition is likely to be accepted on the grounds mentioned therein, therefore, the framing of the charges and thereafter, examination of the prosecution witnesses would be a futile exercise; that order for framing of charges and framing of charges are two different propositions and that after order of framing of charges, the formal charges have not been framed then the order for stay of framing of charges can be passed by this Court; that the bar contained in Section 19(3)(c) of the Prevention of Corruption Act, for grant of stay of the proceedings would not limit the powers of this Court enumerated under Article 227 of the Constitution of India to grant stay of the proceedings pending before the learned trial court; and that after thorough discussion and proper distinction, the Division Bench of Hon"ble Kerala High Court in the matter of P.I. Moideenkutty vs. State of Kerala, Writ Petition No. 15632 of 2000, vide order dated 28.03.2003, stayed the proceedings pending before the learned Special Judge, Kozhikode, arising out of a corruption case. He further submits that even Hon"ble the Supreme Court in the matter of Asian Resurfacing of Road Agency & Anr. vs. Central Bureau of Investigation, Criminal Misc. Petition No. 18585-18586 of 2011, vide order dated 30.09.2011 had granted the stay of the proceedings. Similar order was passed in the matter of C. Zaffer Sharief vs. Central Bureau of Investigation, on 04.07.2012.

10. I have heard the learned counsel for the petitioner and with his able assistance gone through the material available on record.

11. The similar prayer for grant of stay of the proceedings pending before the learned trial court was made before this Court vide Criminal Misc. No. 37749 of 2013 at the time of arguments in the main Criminal Revision Petition. Keeping in view the totality of the facts and circumstances of the case, this Court had admitted the Criminal Revision Petition on 13.09.2013 and ordered that the main petition be listed for hearing within three months. Therefore, the Registry after completing the formalities at its level may post the case for hearing at any time. It is a usual practice in the trial courts that as soon as the order for framing charges is passed then simultaneously the charges are framed on the same day. However, in exceptional cases after pronouncement of the order for framing the charges, the case is adjourned for framing of charges. Usually, the orders of framing of charges as well as the formal charge-sheet are challenged by way of one petition only. In this case, the petitioner has challenged the order of framing of charges. Even at the cost of repetition, it is mentioned that the said petition has already been admitted and likely to be listed for final hearing in near future. In the considered view of this Court even if the proceedings before the learned trial court are not stayed in the peculiar facts and circumstances of the case in hand then also, the petitioner is not likely to be prejudiced. If ultimately her criminal revision petition is accepted by this Court, in that eventuality, the petitioner would not suffer in any manner. Even otherwise Section 19(3)(c) of the Prevention of Corruption Act specifically debars the courts from grant of stay of the proceedings arising out of the Prevention of Corruption Act. For the sake of convenience, the said provision is reproduced below:-

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

12. Therefore, there is a specific bar for grant of stay of the proceedings pending before the learned trial court in this case which is arising out of the Prevention of Corruption Act.

13. Hon'ble the Supreme Court in the matter of Satya Narayan Sharma's case (supra) in para Nos. 15, 17 and 29 specifically held that no court should stay the proceedings arising out of the Prevention of Corruption Act. The said paras of Satya Narayan Sharma's case (supra) are reproduced below:-

15. There is another reason also why the submission that Section 19 of the Prevention of Corruption Act would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". "Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in

any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of *Madhu Limaye v. State of Maharashtra*, *Janata Dal vs. H.S. Chowdhary* and *Indra Sawhney v. Union of India* the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.

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17. Thus in cases under the Prevention of Corruption Act, there can be no stay of trials. We clarify that we are not saying that proceedings u/s 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings u/s 482 can be adapted. However, even if petition u/s 482 of the Criminal Procedure Code is entertained, there can be no stay of trials under the said Act. It is then for the party to convince the court concerned to expedite the hearing of that petition. However, merely because the court concerned is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.

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29. We are informed that several High Courts, overlooking the said ban, are granting stay of proceedings involving offences under the Act pending before Courts of Special Judges. This might be on account of a possible chance of missing the legislative ban contained in clause (c) of sub-section (3) of Section 19 of the Act because the title to Section 19 is "Previous sanction necessary for prosecution". It would have been more advisable if the prohibition contained in subsection (3) had been included in a separate section by providing a separate distinct title. Be that as it may, that is no ground for bypassing the legislative prohibition contained in the sub-section.

14. The ratio of the judgment of the Division Bench of Hon''ble the Kerala High Court (*supra*) would not weigh with this Court in view of the verdict of Hon''ble the Supreme Court in the matter of *Satya Narayan Sharma's case (supra)*. In a latest pronouncement in the matter of *Shahid Balwa Vs. Union of India (UOI) and Others*, , Hon''ble the Supreme Court held as under:-

The Parliament, in its wisdom, has also noticed the necessity of early disposal of cases relating to bribery and corruption. Section 4(4) of the Prevention of Corruption Act, 1988 reflects the will of the Parliament that a Special Judge shall hold the trial of an offence on day-to-day basis, notwithstanding anything contained in the Code of Criminal Procedure. Section 19(3)(c) also states that, notwithstanding anything contained in the Code of Criminal Procedure, no Court shall stay the proceedings under the Prevention of Corruption Act on any other ground and no Court shall exercise the powers of the revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. Statutory provisions highlight the imperative need to eradicate the evils of bribery and corruption.

The interim orders of Hon''ble the Supreme Court cited by the learned Senior

counsel where the proceedings arising out of the Prevention of Corruption Act were stayed are concededly interim in nature. In the facts and circumstances of the said cases, Hon''ble the Supreme Court had granted stay but the facts of the case in hand are completely covered by the ratio of the judgment in Satya Narayan Sharma's case (supra) and hence by following the said verdict, this Court is of the firm opinion that the present application for grant of stay of the proceedings before the learned Special Judge, C.B.I. Court, Chandigarh, sans merit and is hereby dismissed.