

(2021) 09 TEL CK 0019
In the Telangana High Court
Case No : Criminal Petition No. 6534 Of 2020

Srilakshmi Yerra, IAS

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 21-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 21

Code of Criminal Procedure, 1973 — Section 2(h), 2(r), 173, 173(2), 173(8), 177, 179, 227, 239, 309, 482

Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2021) 09 TEL CK 0019

Hon'ble Judges : Dr. Shameem Akther, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is filed by the petitioner/A.6 in FIR No.RC 17(A)/2009-CBI/Hyd of CBI, Hyderabad, to call for records and direct the learned Principal Special Judge for CBI Cases, Hyderabad, to conduct hearing on charges and discharge applications, only after the CBI files its Final Report under Section 173 of Cr.P.C. in C.C.No.1 of 2012 with respect to the 'interstate boundary dispute', which is kept on hold and not specifically dealt with in the four charge-sheets filed by CBI, and which is contrary to the judgment, dated 16.12.2010, passed by a Division Bench of this Court in W.A.Nos.532 and 681 of 2010 and the common order, dated 21.03.2013, passed in Criminal Petition Nos.394, 395, 346, 396 of 2013 in C.C.No.1 of 2012 by the Principal Special Judge for CBI Cases, Hyderabad.

2. Heard the submissions of Sri K.Raghavacharyulu, learned counsel for the petitioner/A.6, Sri K.Surender, learned Special Public Prosecutor for CBI appearing on behalf of the sole respondent and perused the record.

3. Learned counsel for the petitioner/A.6 vehemently contended that proceeding

with hearing on charges and discharge applications by the Court below against the petitioner/A.6 in the subject Calendar Case is contrary to the judgment, dated 16.12.2010, passed by a Division Bench of this Court in W.A.Nos.532 & 681 of 2010, wherein, it was directed that "inquiry/investigation into boundary dispute shall have to await order of the Supreme Court of India", and also contrary to common order, dated 21.03.2013, passed in Criminal M.P.Nos.394, 395, 346, 396 of 2013 in C.C.No.1 of 2012 by the Principal Special Judge for CBI Cases, Hyderabad, wherein, it was directed that "hearing on charges is postponed till completion of further investigation in this case with an observation that prosecution shall complete its further investigation at the earliest". The interstate boundary dispute between the States of Andhra Pradesh and Karnataka is still pending and not yet resolved. In fact, the Hon'ble Apex Court directed the Surveyor General of India to conduct survey in the matter of interstate boundary of two states, i.e., Andhra Pradesh and Karnataka, in order to demarcate the boundaries of disputed area, where illegal mining has taken place. However, the report of Surveyor General of India has not become final and has not been grounded. The matter was entrusted to Union of India to demarcate the boundary between Andhra Pradesh and Karnataka. Unless and until the interstate boundary is fixed, the quantum of alleged illegal mining cannot be determined. Further, in the counter affidavit, the CBI had categorically stated that investigation on the issue of illegal mining near the disputed interstate boundary has not been done, since the same is pending settlement, as directed by the Hon'ble Apex Court. In view of the said categorical admission by CBI, the four charge sheets/supplementary charge-sheets filed by the CBI on 03.12.2011, 30.03.2012, 02.01.2013 and 09.04.2014 cannot be treated as Final Reports filed on completion of investigation and the Court below cannot proceed further basing on the said reports. Further, investigating agency has no right to choose, either to produce or not to produce certain documents. Section 173(8) of Cr.P.C. contemplates only further investigation, but not fresh investigation. According to Section 2(h) of Cr.P.C., 'Investigation' includes all the proceedings under Cr.P.C., for collection of evidence by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. It is an inclusive definition. As per Section 2(r) of Cr.P.C., 'police report' means a report forwarded by a police officer to a Magistrate under Sub-Section (2) of section 173. Once investigation is ordered, investigating officer has statutory duty to investigate entirely into the dispute and communicate his opinion by filing charge sheet. When investigation is not completed and in the absence of compliance of provisions under Section 173(8) Cr.P.C, the question of framing charge under Section 239 Cr.P.C does not arise. If charges are framed, grave injustice would be caused to the petitioner/A.6. Deferment of hearing on charges is necessary to prevent the abuse of process of Court and to secure ends of justice. It is a fit case to exercise jurisdiction under Section 482 of Cr.P.C. by this Court and ultimately, prayed to allow the Criminal Petition as prayed for. In support of his contentions, the learned counsel had relied on the following citations.

1. Sanjay Kumar Rai vs. State of Uttar Pradesh and another Decided on 07.05.2021 in Criminal Appeal No.472/2021 by the Hon'ble Supreme Court of India.
2. Mrs. Mayawati vs. Union of India and others (2012) 8 SCC 106
3. State of Madhya Pradesh vs. Sheetla Sahai and others (2009) 8 SCC 617
4. State of M.P. vs. Mohanlal Soni (2000) 6 SCC 338
5. Union of India Vs. Prafulla Kumar Samal and another (1979) 3 SCC 4
6. M.C.Abraham and others Vs. State of Maharashtra (2003) 2 SCC 649

4. On the other hand, the learned Special Public Prosecutor for CBI opposed the relief sought by the petitioner/A.6 by contending that pendency of interstate boundary dispute would not, in any way, affect the jurisdiction of trial Court, in view of provisions of Sections 177 and 179 of Cr.P.C. The petitioner/A.6, under the guise of pendency of interstate boundary dispute, is trying to stall the entire proceedings in the subject calendar case, which cannot be countenanced. The dilatory tactics being adopted by the petitioner/A.6 have to be deprecated. Framing of charges in respect of illegal mining shall not be construed to be pragmatic to the facts of the case. The contention of the petitioner/A.6 that quantification of illegal mining would be dependent upon the interstate boundary dispute cannot be sustained, when there is a subsisting direction from the Hon'ble Apex Court to implement the report of the Surveyor General of India in respect of demarcation of boundary between the States of Andhra Pradesh and Karnataka. The Court below did not violate any provisions of law. The contention of the petitioner/A.6 that investigation with regard to illegal mining is not completed is false. In fact, investigation is completed and charge-sheets/supplementary charge-sheets in respect of nine accused persons, including the petitioner/A.6, were filed before the Court below. CBI also filed Memo before the Court below on 27.07.2021 stating that investigation is completed and there are no further reports to be filed under Section 173(8) of Cr.P.C. It is the prerogative of the Investigating Agency to enquire into the issues such as boundary dispute between the two states etc., and the petitioner/A.6 cannot compel the Investigating Agency to investigate into a specific issue. No further investigation is pending and the provisions of Section 173(8) Cr.P.C have been scrupulously followed. When the investigating agency came on record and filed a Memo to the effect that reports, as contemplated under Section 173 Cr.P.C, have been filed, the Court below rightly decided to proceed further in the matter. The judgments cited by the learned counsel for the petitioner/A.6 are not applicable to the facts and circumstances of the case on hand. Further, if the petitioner/A.6 feels that there are lacunae/laches on the part of prosecution, she is entitled to canvass the same before the Court below and seek discharge from the subject Calendar Case. Inherent power of High Court under Section 482 of Cr.P.C., cannot be exercised in a routine manner, but has to be exercised most sparingly and with abundant caution. The instant case is not a fit case to exercise the said inherent

power of High Court and ultimately prayed to dismiss the Criminal Petition.

5. In reply, the learned counsel for the petitioner/A.6 would submit that in order to establish the complicity of the petitioner/A.6, investigation has to reach to its logical conclusion, on all aspects. In the instant case, investigation is not completed. Incomplete form of opinion is impermissible under Section 173(2) Cr.P.C. No undertaking has been filed by the investigating officer before the Court below with regard to further investigation on interstate boundaries.

6. In view of the above rival contentions, the point that arises for determination in this Criminal Petition is as follows:

"Whether the petitioner/A.6 has made out valid grounds to grant the relief sought for under Section 482 of Cr.P.C., i.e., to direct the learned Principal Special Judge for CBI Cases, Hyderabad, to conduct hearing on charges and discharge applications, only after the CBI files complete Final Report under Section 173(2) of Cr.P.C?

POINT:-

7. The material placed on record reveals that the petitioner/A.6 is an IAS officer. The main accusation against the petitioner/A.6 is that she, while working as Secretary, Industries & Commerce Department, Government of Andhra Pradesh, entered into criminal conspiracy along with other accused, to cheat the Government by sanctioning mining leases of iron ore to M/s.Obulapuram Mining Company Private Limited (M/s.OMCPL), violating the governing rules and procedures. On 17.11.2009, the then Government of A.P. issued G.O.Ms.No.467 according consent to all the members of the Delhi Police Establishment to exercise the powers and jurisdiction in the State of Andhra Pradesh regarding boundary disputes and illegal mining activities of M/s.OMCPL and M/s.Bellary Iron Ore Pvt. Ltd (M/s.BIOPL) in Bellary Reserve forest of Anantapur District. On 01.12.2009, the Central Government has issued notification accepting the entrustment of investigation and on 07.12.2009, CBI registered FIR No.RC.17(A)/2009-CBI/Hyderabad, against various accused, under various Sections of IPC, Mines and Mineral (Development and Regulation) Act, Forest Act and Prevention of Corruption Act. Thereafter, M/s.OMCPL filed W.P.No.27120 of 2009 before the erstwhile High Court of Andhra Pradesh, challenging the validity of G.O.Ms.No.467, wherein, interim stay of all further proceedings was granted, which was also made absolute. Against the said interim order, CBI filed W.A.No.532 of 2010 and the Government of India filed W.A.No.681 of 2010, wherein, a Division Bench of erstwhile High Court of Andhra Pradesh, while directing the CBI not to embark upon the dispute relating to the boundary until further orders from the Supreme Court, permitted investigation into other issues, i.e., illegal mining by M/s.OMCPL and BIOPL. Accordingly, CBI filed first charge-sheet on 03.12.2011 against A.1 to A.5, but however, the petitioner/A.6 was not arrayed as accused in the said charge-sheet. CBI filed first supplementary charge-sheet on 30.03.2012 against the petitioner/A-6. On 02.01.2013, CBI filed third

charge-sheet against A-7. In all the charge-sheets, it was categorically mentioned that investigation was limited to illegal mining activity only and the investigation into the interstate boundary dispute would be continued, subject to the outcome of the Writ Petition. On filing of a Memo by the CBI stating that investigation is complete and charges can be framed, A.1 to A.4 and A.7 filed applications under Section 309 of Cr.P.C. in the subject CC requesting postponement of hearing on charges till filing of Final Report under Section 173(2) Cr.P.C., and the then Presiding Officer of the Court below allowed the said applications, vide common order, dated 21.03.2013.

8. Thereafter, on 09.04.2014, CBI filed fourth charge-sheet against A.8 and A.9 in the subject CC. While so, when the matter of interstate boundary dispute went up to the Hon'ble Apex Court, the Hon'ble Apex Court, at the first instance, directed the Surveyor General of India and Chief Secretaries of Karnataka and Andhra Pradesh to coordinate with each other in determining the interstate boundary. Accordingly, the Surveyor General of India filed final report before the Hon'ble Apex Court. While Government of Karnataka accepted the said report, Government of Andhra Pradesh had some reservations. Accordingly, the Hon'ble Apex Court held that it is entirely up to the Union of India to implement the report of Surveyor General of India and demarcate the boundary between the States of Andhra Pradesh and Karnataka. However, the report of Surveyor General of India regarding the interstate boundary has not become final yet and not grounded. While so, on 08.10.2020, the Court below recorded that CBI has filed a memo to expedite the proceedings by hearing the arguments of both sides and that the investigating officer stated in open Court that investigation is completed and hence, the counsel on record shall get ready to argue the matter on hearing on charges and on discharge applications, failing which, appropriate orders will be passed. Aggrieved by the same, the petitioner/A.6 filed this Criminal Petition.

9. The core contention of learned counsel for the petitioner/A.6 is that hearing on framing of charges and discharge application can only be conducted by the trial Court, after CBI files its Final Report under Section 173(2) of Cr.P.C., including the interstate boundary dispute, and that the charge-sheets/supplementary charge-sheets filed by CBI can never be construed as Final Report under Section 173(2) of Cr.P.C., since the investigation is incomplete. Per contra, the main contention of the learned Special Public Prosecutor for CBI is that investigation is completed on all aspects, except the issue of illegal mining, if any, near the disputed interstate boundary, which is sub judice before the Hon'ble Apex Court, and that there are no further reports to be filed under Section 173(8) of Cr.P.C. and that it is the prerogative of the Investigating Agency to enquire into the issues such as boundary dispute between the two states etc., and the petitioner/A.6 cannot compel the CBI to investigate into a specific issue.

10. It is apt to state that during the pendency of this Criminal Petition, the respondent/complainant had filed a Memo, dated 27. 07.2021, before the Court

below, which reads as follows:

MEMO FILED BY THE RESPONDENT/COMPLAINANT May it please your Honour,

1. That the case was registered by CBI, ACB, Hyderabad Branch vide Crime No.RC.17(A)/2009 on 07.12.2009 U/s 120-B, 420, 379, 411, 427, 447 of IPC, Sec.13(2) r/w Sec.13(1)(d) of PC Act, 1988, Sec.26 of Indian Forest Act, 1927; Sec.21 r/w Sec.4(1) & 4(1)(A) and Sec.23 of Mines and Mineral (Development & Regulations) Act, 1957, to investigate Boundary related disputes and illegal mining by M/s.OMCPL and M/s.BIOPL in Bellay Reserve Forest of Ananthapur District of Andhra Pradesh.

2. It is submitted that the investigation is completed and there are no further reports to be filed U/Sec 173(8) of Cr.P.C. Hence this memo.

Be pleased to consider,

(P.V.Seetharamam)

Dy.Superintendent of Police,

CBI/ACB/Hyderabad.

Date: 27.07.2021

Place: Hyderabad.

11. Further, the order of the Hon'ble Apex Court, dated 17.09.2018, passed in Special Leave Petition (C) No.7366-7367 of 2010, reveals that the Surveyor General of India filed a Final Report in relation to determination of interstate boundary between the two states, i.e., State of Karnataka and the State of Andhra Pradesh, before the Hon'ble Apex Court and that as there were some reservations for the State of Andhra Pradesh, the Hon'ble Apex Court held that it is entirely up to the Union of India to implement the report of Surveyor General of India and demarcate the boundary between the States of Andhra Pradesh and Karnataka. As per the submissions made on behalf of the respondent/complainant, entire investigation is completed in the subject criminal case and no further investigation is pending and the provisions of Section 173(8) of Cr.P.C. were scrupulously followed and a Memo, dated 27.07.2021, was filed indicating the same and pursuant to the Memo filed, the trial Court was pleased to direct both the parties to get ready to argue the matter on hearing on charges and on discharge applications. As per the petitioner/A.6, the investigation is incomplete and Section 173(2) of Cr.P.C. mandates complete investigation and the charge-sheets/supplementary charge-sheets filed in this case do not indicate complete investigation. It is for the respondent/CBI to state whether the investigation is complete or incomplete. As stated above, the respondent/CBI filed a Memo, dated 27.07.2021 before the Court below stating that investigation is completed and there are no further reports to be filed under Section 173(8) of Cr.P.C. It is apt to state that investigation is the prerogative of the prosecuting agency. As held by the Hon'ble Supreme Court in a catena of judgments, there is a well-

defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the Court to monitor the investigation process, so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the Court is to interfere in each and every stage of the investigation, it would affect its normal course and this Court, in exercise of its inherent power under Section 482 of Cr.P.C., cannot interfere with such investigation, except in rare cases where the Court is convinced that investigation officer acted mala fide or there is abuse of process of power or non-compliance of provisions of Cr.P.C. In any event, an accused person cannot dictate terms to the investigating agency to investigate on a specific issue. In the instant case, the complainant/CBI has filed a Memo before the Court below stating that investigation is completed and there are no further reports to be filed under Section 173(8) of Cr.P.C. Further, on 08.10.2020, the Court below recorded that CBI has filed a Memo to expedite the proceedings by hearing the arguments on both sides and that the investigating officer, in open Court, stated that investigation is completed. The issue in the instant case is pilferage of minerals from Bellary Reserve Forest of Anantapur District in the State of Andhra Pradesh by M/s.OMCPL and M/s.BIOPL, with connivance of Government servants, and the main accusation against the petitioner/A.6 is that she entered into criminal conspiracy along with the other accused to cheat the Government by sanctioning mining leases of iron ore to the aforementioned mining companies, violating the governing rules and procedures. If there are any omissions and commissions on the part of the investigating agency in collecting the evidence, the prosecution would suffer on account of that and no prejudice would be caused to the petitioner/A.6. Generally, the Court will not order further investigation in the matter. The fact remains that altogether four charge-sheets were filed and a Memo, dated 27.07.2021, was filed to the effect that investigation is complete and there are no further reports to be filed under Section 173(8) of Cr.P.C. In view of the same, it is not appropriate on the part of the petitioner/A.6 to raise a ground that there is no complete investigation in terms of Section 173(2) of Cr.P.C. In the given circumstances of the case, it is for the respondent/complainant to state that investigation is incomplete and further investigation is warranted and it is not open to the petitioner/A.6 to raise such a ground.

12. I have gone through all the decisions relied by the learned counsel for petitioner/A.6. In Sanjay Kumar Rai's case (1 supra), the Hon'ble Apex Court held that discharge is a valuable right provided to the accused; Whenever there is likelihood of serious prejudice to the rights of a citizen (accused) and the prosecution is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law; The High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstances of individual cases; the Hon'ble Apex Court does not recommend a complete "hands off approach" by the High Court.

13. Mrs. Mayawati's case (2 supra) relates to Taj Heritage Corridor Project case. The question that arose for consideration by the Hon'ble Apex Court was whether the FIR issued by CBI for the offences under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act against the petitioner therein to investigate into the matter of alleged disproportionate assets is beyond the scope of earlier directions issued by the Hon'ble Apex Court. After analyzing the material on record and after interpreting various judgments, the Hon'ble Court held that the direction of Hon'ble Apex Court was with regard to irregularities in Taj Corridor Project alone and not with a party to the said proceedings and therefore, the second FIR against the petitioner therein in disproportionate assets case was unauthorized and illegal and hence quashed.

14. In Sheetla Sahai's case (3 supra) the Hon'ble Apex Court held that there cannot be any doubt whatsoever that the tests for the purpose of framing of charge and the one for recording a judgment of conviction are different. A distinction must be borne in mind that whereas at the time of framing of the charge, the Court may take into consideration the fact as to whether the accused might have committed the offence or not, at the time of recording a judgment of conviction, the prosecution is required to prove beyond reasonable doubt that the accused has committed the offence; The Court should proceed on the basis as to whether the materials brought on record, even if given face value and taken to be correct in their entirety, disclose commission of a cognizable offence and the trial Court must determine considering the entirety of the materials brought on record and not on a part of it; The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot, at any stage, be deprived of taking advantage of the materials, which the prosecution itself has placed on record; If upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial.

15. In Mohanlal Soni's case (4 supra), the Hon'ble Apex Court held that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused; The Court is not required to appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused; If the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed; The charge can be quashed, if the evidence, which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence.

16. In Prafulla Kumar Samal's case (5 supra) the Hon'ble Apex Court held that the a Judge, while considering the question of framing the charges under Section 227 of the Code, has the undoubted power to sift and weigh the evidence for the

limited purpose of finding out whether or not a prima facie case against the accused has been made out; Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial; The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused; That in exercising his jurisdiction under Section 227 of the Code the Judge, which under the present Code is a senior and experienced Court, cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on and this, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence, as if he was conducting a trial. While there cannot be any dispute with regard to the law laid down in the cited decisions, the facts of the said decisions are entirely different from the facts of the case on hand. In none of the cited decisions, similar circumstances exist, to accede and act upon the prayer of the petitioner/A.6. Hence, the cited decisions are not helpful to the petitioner/A.6. Under these circumstances, the Court below has no other option except to proceed with hearing on framing of charges and discharge application. Therefore, it cannot be held that there is abuse of process of Court by the trial Court.

17. Further, it is apt to observe that the subject Calendar Case is of the year 2012. Though nine years have elapsed, the case is still at the stage of hearing on framing of charges and discharge application/s. While it is important to give adequate opportunity to the accused to defend his/her case following the principle of fair trial, it is equally important to ensure that the entire proceedings in a criminal case cannot be stalled on flimsy and unconvincing grounds. Speedy trial is the essence of criminal justice system, which cannot be stalled years together on unreasonable grounds. It is well known that "justice delayed is justice denied". Right to speedy trial is not a fact or fiction, but a Constitutional reality, which has to be given its due respect. In a catena of judgments, the Hon'ble Apex Court held that speedy trial is an inalienable right under Article 21 of the Constitution and hence, no person shall be deprived of his life and liberty, without the procedure of law, and the procedure of law must be 'fair', 'reasonable', and 'just'. Due process of law cannot be abused by an accused so as to frustrate the trial procedure on flimsy grounds.

18. Further, it is well established that though the powers of this Court under Section 482 Cr.P.C., are very wide, those powers are required to be exercised sparingly and with abundant caution. The said inherent power can be exercised only when there is abuse of process of Court or to secure ends of justice. The

Hon'ble Supreme Court, in catena of decisions, deprecated the practice of staying criminal trials and police investigations, except in exceptional cases. The present case, in my considered view, does not fall under exceptional cases where the inherent power under Section 482 Cr.P.C., can be exercised in favour of the petitioner/A.6.

19. In view of the foregoing discussion, this Court is of the considered opinion that the petitioner/A.6 has failed to make out valid grounds to accede to her request, by exercising inherent power of this Court under Section 482 of Cr.P.C. The relief sought by the petitioner/A.6 in this merit and is liable to be dismissed. The Criminal Petition is devoid of Criminal Petition cannot be granted.

20. In the result, the Criminal Petition is dismissed. Consequently, the interim order granted by this Court on 09.07.2021 and which is being extended from time to time, stands vacated.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.