IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE ALOK AWASTHI

24th OF AUGUST, 2026

MISC. CRIMINAL CASE No. 23534 of 2020

KASHI RAM RAIKWAR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Rishi Tiwari - Advocate for the applicants.

Shri Rajat Lohia - Advocate for the respondent.

ORDER

Per. Justice Alok Awasthi

1. The present petition is filed under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS, 2023")/Section 482 of the Code of Criminal Procedure, 1973 (for brevity "Cr.P.C.") for quashment of proceedings pending for the offences under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") and Section 109B of the Indian Penal code, 1860 (in short "IPC") pending before the Special Judge (Prevention of Corruption Act), District Ujjain in Special Case No. 3/2017.

2. The prosecution case, in brief, is that applicant No.1/Kashi Ram Raikwar was posted as Chief Executive Officer, District Antyavasayi Sahkari Vikas Samiti and applicant No. 2 is his wife and No. 3 is his son. On

23.01.2014, a raid was conducted by the Lokayukta, Ujjain in connection with the allegations against applicant No.1. Thereafter, the Inspector General, Lokayukta vide letters dated 05.08.2014 and 12.02.2015 sought sanction for prosecution from the Managing Director, Rajya Sahkari Anusuchit Jati Vitta Evam Vikas Nigam, for the offences punishable under Sections 13(1)(e) and 13(2) of the PC Act. The sanctioning authority vide communication dated 20.02.2015 sought the Enquiry Report and relevant material collected during investigation for consideration of the proposal in terms of the GAD Circular dated 05.09.2014. The applicant No.1 retired from service on 29.02.2016. The Lokayukta again sought sanction vide letter dated 17.06.2016, but the Enquiry Report was not produced. Furthermore, the Secretary, Nigam vide letter dated 26.07.2016 informed the competent authority that sanction could not be granted in the absence of the Enquiry Report and also pointed out that the applicant No.1 had already retired. Nevertheless, on 10.10.2016, the Lokayukta again sought sanction without forwarding the Enquiry Report. Thereafter, the charge-sheet was filed on 18.01.2017 for the offences punishable under Sections 13(1)(e) and 13(2) of the PC Act and Sections 109 and 120-B of IPC and cognizance was taken by the learned Special Judge (Prevention of Corruption Act), District Ujjain. Charges were framed on 08.02.2017 and the prosecution evidence commenced on 28.03.2017. As on 07.02.2020, 89 witnesses are yet to be examined.

3. Learned counsel for the applicants has submitted that the raid was conducted on 23.01.2014 and applicant No.1 retired from service on

29.02.2016. However, the charge-sheet was filed on 18.01.2017. It is also contended that despite the applicant No.1 being in service during the relevant period, no sanction under Section 19(1)(c) of the PC Act was obtained. The sanctioning authority could not have validly considered the question of sanction in absence of the complete material collected during investigation. It is further contended that even after several reminders, the lokayukta failed to furnish the Enquiry Report and other relevant material to the competent sanctioning authority. A reference has been made to the GAD circular dated 05.09.2014 requiring the relevant material to be placed before the sanctioning authority to enable it to apply its mind. The applicants cannot be made to suffer for the delay attributable to the investigating agency in completion of the process of sanction, particularly when they had no role in such process.

4. Learned counsel further argued that continuation of the proceedings would also violate the applicants' fundamental right to speedy trial under Article 21 of the Constitution of India. Although cognizance was taken on 18.01.2017 and the trial commenced on 28.03.2017, only nine witnesses out of 98 had been examined till 07.02.2020. It is also argued that no delay is attributable to the applicants and that the prosecution has failed to explain as to why the trial is not concluded till date. Applicant No.1 aged about 64 years and suffering from various ailments, is being subjected to a long criminal trial, while applicant No.2 / wife of the applicant No. 1 and No. 3 / son of the applicant No. 1 have been implicated without sufficient independent material against them. It is, therefore, prayed that present

petition be allowed and the proceedings pending before the Court of Special Judge (Prevention of Corruption Act), Ujjain in Special Case No.3/2017 be quashed.

5. To buttress the aforesaid submissions, learned counsel has taken the prop of the couple of judgments delivered in the cases of ***Mahendralal Das Vs. State of Bihar, (2001) 3 SCC 2989*** and ***Ramanand Chowdhary Vs. State of Bihar*** reported in ***AIR 1994 SC 948***, wherein the Supreme Court has made its observation regarding inordinate and unexplained delay.

6. *Per contra*, counsel for the respondent has vehemently opposed the prayer and argued that a report regarding acquisition of disproportionate assets by applicant No.1 was registered on 22.01.2014 and search was conducted on 23.01.2014. During the investigation, the applicants' income was assessed at Rs.52,34,682/- in the check period against assets and expenditure of Rs.1,85,26,839/-, resulting in disproportionate assets of Rs.1,32,92,157/- i.e. 253.92% from the known income. He has also argued that the investigation was completed within a period of about seven months and a detailed report along with relevant documents was forwarded for sanction. However, no decision was taken by the sanctioning authority and in the meantime, applicant No.1 retired on 29.02.2016. Thereafter, the final report was filed on 13.01.2017 and cognizance was taken on 18.01.2017. Thus, at this stage, no sanction was required in view of the applicant's retirement. He has also argued that the plea of delay is unsustainable as the investigation was completed within seven months and the subsequent delay was not attributable to the prosecution. The trial proceedings were affected

due to pandemic COVID-19.

7. It has also been submitted that the issue with regard to the impleadment of applicant Nos.2 and 3 have already been decided in the case of ***Smt. Indira Vs. State of M.P.*** decided in Cr.R. No.300/2017. Hence, the petition deserves to be dismissed.

8. To bolster his aforesaid submissions, he has placed reliance over judgments in the cases of ***Kalicharan Mahapatra Vs. State of Orissa, (1998) 6 SCC 411, Parkash Singh Badal Vs. State of Punjab, (2007) 1 SCC 1 and Abhay Singh Chautala Vs. CBI, (2011) 7 SCC 141.***

9. Heard learned counsel for the parties at length and perused the record.

10. In the present case, the first question arises before this Court for determination is whether before proceeding against the present applicants, the prior sanction for prosecution is mandatory course or not ?

11. The concerned department had not yet conveyed its opinion regarding the refusal to grant prosecution sanction to the Lokayukta.

12. The contention with regard to the sanction cannot be a sufficient ground for quashing the entire proceedings. It is true that the record reflects the correspondence between the investigating agency and the competent authority regarding the Enquiry Report and grant of sanction. It is also not in dispute that applicant No. 1 retired on 29.02.2016, but the effect of such correspondence, the relevancy of the required sanction at the relevant stage and the legal consequence are questions for consideration in the light of the statutory provisions. Such questions, particularly where the applicants are

twisted with the factual circumstances of the prosecution, cannot be permitted to result in termination of a serious corruption case at the threshold unless a clear and patent legal bar to the prosecution is demonstrated.

13. At this juncture, the observation made by the Apex Court in the case of **Kalicharan Mahapatra (supra)** is worth to be quoted here :-

> "A public servant who committed an offence mentioned in the Act, while he was a public servant when the court takes cognizance of the offence. But if he ceases to be a public servant by that time the court can take cognizance of offence without any such sanction. In other words, the public servant who committed the offence while he was public servant is liable to be prosecuted whether he continues in office or not at the time of trial or during the pendency of the prosecution."

14. Similarly, in the same context, the Apex Court in the case of ***Parkash Singh Badal (Supra)*** has held that "***the relevant date with reference to which a valid sanction is sine qua non for taking congnizance of an offence committed by a public servant as required by Section 19 is the date on which the Court is called upon to take cognizance of the offence of which he is accused."***

15. Likewise, it has also been held in the case of Abhay Singh Chautala (Supra) by the Apex Court that "***Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in Prakash Singh Badal v. State of Punjab (cited supra) to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in K. Karunakaran v. State of Kerala (cited supra) and the later decision in Prakash Singh Badal v. State of Punjab (cited supra). The appeals are***

without any merit and are dismissed."

16. The common observation made in the aforesaid judgments, is that the protection of a prosecution sanction is strictly conditional upon the exact office held by the public servant at the time, when the Court takes congnizance. Now, it is ascertained that prior sanction is necessary only if the accused continues to hold the exact same office where he is alleged to have abused. If the accused has retired, changed office or moved to a completely different legislative term by the time the Court takes cognizance, the requirement for a sanction under Section 19 of PC Act comes to an end.

17. In the instant case, it appears from the record available that the applicant No. 1 retired on 29.02.2016 and raid was conducted by the lokayukta on 23.01.2014. In between, neither the applicant No. 1 has changed the office establishment nor moved to a different legislative. He has retired from the service on 29.02.2016 from the same office. The charge sheet against the accused was filed after his retirement from public service, therefore, the requirement of sanction for prosecution does not exist. Hence, the contentions regarding prior sanction is hereby discarded. It is also reflected from the record that the investigation was completed within a comparatively short period and after the retirement of public servant - accused, charge sheet was filed. Therefore, the applicants cannot equate the time consumed in investigation with the delay in conclusion of the trial Court proceedings.

18. Another question for determination as to whether the prolonged pendency of the trial itself warrants quashment of the proceedings ?

19. It is correct that the right of speedy trial is a fundamental right enshrined under Article 21 of the Constitution of India. It can be said that a person cannot be kept for facing criminal proceedings for an indefinite period, but it is equally true that there is no inflexible period of limitation prescribed for conclusion of every criminal trial, merely on the basis of constitutional guarantee of speedy trial. Before concluding any criminal trial, the Court should have to examine the totality of circumstances including the gravity of the offence, examination of documentary evidence, reasons for delay and the extent to which the delay is attributable to the prosecution or the accused.

20. In the case of ***Mahendralal Das (Supra),*** the Apex Court has observed the importance of the constitutional guarantee of a speedy trial and recognizes that an unexplained and oppressive delay may, in an appropriate case, warrant interference. Similarly, the judgment in ***Ramanand Chowdhary (Supra)*** emphasizes the importance of expeditious criminal proceedings and the prejudice, which may be caused to an accused by an unduly prolonged trial. However, the said principle has to be applied having regard to the facts and circumstances of each case. The judgments mentioned above, cannot be read as laying down an absolute rule that pendency of a criminal case for a particular period itself mandates quashment of the proceedings. Every prosecution case which remained pending for a considerable period, is liable to be quashed notwithstanding the gravity of the offence and the circumstances responsible for the delay. The Court has to determine as to whether the delay has caused such prejudice or injustice as would justify the

extraordinary relief of terminating the pending proceedings.

21. In the case at hand, the allegations are under the PC Act having alleged possession of disproportionate assets of more than the actual income. The prosecution has to examine 98 witnesses. A conclusion of any case or trial carries the future of the accused, therefore, the prosecution necessarily involves examination of documentary evidence, sources of income, expenditure and acquisition of assets. Thus, merely on the ground that the trial has taken considerable time, the prosecution cannot be terminated by quashing the trial proceedings.

22. However, it is also in our mind that we cannot overlook the fact that the case was instituted in the year 2017 and remained pending for a substantial period. The constitutional right of the applicants to a reasonably expeditious trial has to be balanced with the interest of justice in having serious allegations of corruption adjudicated on merits. At this stage, apart from quashment of proceedings, steps to ensure that trial is concluded expeditiously can be taken.

23. The record indicates that a large number of prosecution witnesses are yet to be examined. In the considered opinion of this Court, the prosecution is required to take all necessary steps to produce and examine all the important witnesses without seeking unnecessary adjournments.

24. So far as the impleadment of applicants No.2 / wife of the applicant No. 1 and No. 3 / Son of the applicant No. 1 without sufficient independent material is concerned, the Division Bench of this Court in the case of ***Smt. Indira Vs. State of M.P.*** decided on 10.04.2017 in ***Criminal***

Revision No.300/2017 has already dismissed the revision filed by the applicant No. 2 and No. 3 by making observation that "*...........the wife and son have rightly been made accused in the matter. The grounds raised before this Court be raised before the trial court at the time of conclusion of trial"*. In view of the same, no interference is made out on this issue.

25. In view of the aforesaid discussion, we are not inclined to allow the present petition for quashment of the proceedings. We deem it appropriate to dispose of the present petition without expressing any opinion on merits, with following directions :-

(i) The learned Special Judge (Prevention of Corruption Act), Ujjain, shall make every endeavour to conclude the trial in Special Case No.3/2017 arising out of Crime No.43/2014 preferably within a period of six months from the date of receipt of a certified copy of this order, in accordance with law.

(ii) The prosecution shall take all necessary steps for securing the presence of the witnesses and shall also take steps to examine the remaining important prosecution witnesses at the earliest possibly without seeking unnecessary adjournments.

26. With the aforesaid directions, the petition stands disposed of.

27. Let a copy of this order be forwarded to the learned Trial Court for necessary compliance.

(SUBODH ABHYANKAR)
JUDGE

(ALOK AWASTHI)
JUDGE

Vindesh