

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 8439 of 2023

Petitioner :- Chhote Lal Sharma

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Manish Singh, Sushma Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Manish Singh, learned counsel for the petitioner and learned A.G.A. for the State.

2. This civil misc. petition under Article 227 of the Constitution of India has been filed by the petitioner- Chhote Lal Sharma with a prayer to stay the effect and operation of order dated 21.11.2022 passed by learned Chief Judicial Magistrate, Baghpat in Case No.4065 of 2014 "State vs. Chhote Lal Sharma), under sections- 307, 302 and 34 I.P.C., Police Station- Kotwali Baghpat, District- Baghpat.

3. The relevant facts related to this petition are as below:-

(i) On the basis of an F.I.R. lodged by respondent no.2- Laxmi Chandra, being Case Crime No.44 of 2014, under sections- 147, 148, 149, 302, 307/34 I.P.C., the matter was investigated and a charge-sheet was filed on 11.04.2014. Later on, investigation was handed over to CBCID vide order dated 05.05.2014.

(ii) As per contention of the petitioner, despite the stay order of the High Court passed in Criminal Misc. Writ Petition No.12096 of 2014, the CBCID filed a charge-sheet under sections- 302, 307 read with section- 34 I.P.C.

(iii) The Chief Judicial Magistrate, Baghpat vide order dated 30.07.2014 took cognizance and issued non-bailable warrants and process under sections 82 and 83 Cr.P.C.

(iv) The aforesaid order of taking cognizance dated 30.07.2014 was challenged by filing an Application (under section 482 Cr.P.C.) No.30842 of 2014, in which the High Court passed an order on 08.08.2014 staying the effect and operation of the order dated 30.07.2014, which is as below:-

"Heard learned counsel for the applicant and leaned A.G.A. for the State. The present application has been filed against the charge sheet filed by C.B.C.I.D. on 26.07.2014 C.B. No. 69 of 2014 in case Crime No. 44 of 2014,

under Sections 302, 307, 34 I.P.C., P.S. Bagpat, District Bagpat pending before C.J.M., Bagpat.

It has been contended by learned counsel for the applicant that earlier a writ petition was filed before this Court being Criminal Misc. Writ Petition No. 12096 of 2014, in which an interim order was passed which reads as follows: "In the meantime as local police has already investigated the matter and has already submitted charge-sheet against Mahipal @ Goti and Pradeep @ Pappu and thereafter and it appears that ignoring the parameter that has been settled for effectuating transfer, the transfer order of investigation has been passed, this Court prima facie finds that in order to favour accused persons such an order has been passed, in view of this, till the next date of listing, operation of the order dated 05.05.2014 to be kept in abeyance and no further action be taken pursuant thereto and the earlier Investigating Agency would be free to proceed the matter."

Learned counsel for the applicant submits that in spite of very specific order passed by this Court, the C.B.C.I.D. filed a charge sheet on the basis of which cognizance has been taken on 30.07.2014 against the applicant and NBW and proceedings under Sections 82/83 Cr.P.C. have been initiated.

In view of very specific order passed by this Court in the writ petition, mentioned above, this Court has been left with no option but to stay the effect and operation of the impugned order dated 30.07.2014.

Three weeks time is granted to opposite party no. 2 as well as learned A.G.A. to file counter affidavit. Rejoinder affidavit may be filed within two weeks thereafter.

List this case on 15.09.2014.

Till then, the effect and operation of order dated 30.07.2014 shall remain stayed."

(v) The Court of Chief Judicial Magistrate, Bagpat, applying the judgement of Supreme Court in Asian Resurfacing of Road Agency Pvt. Ltd. vs. Central Bureau of Investigation, decided on 28.03.2018 in Criminal Appeal Nos.1375-1376 of 2013 proceeded with the case and passed an order in the light of the above judgment on 21.11.2022, which is as below:-

“पत्रावली पेश हुई। प्रस्तुत वाद की कार्यवाही मा० उच्च न्यायालय के आदेशानुसार कई वर्षों से स्थगित चल रही है।

माननीय सर्वोच्च न्यायालय की विधि व्यवस्था Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. Vs Central Bureau of Investigation क्रिमिनल अपील सं०- 1375-1376/13 में पारित आदेश दिनांकित 27.03.2018 के मामले में मा० उच्चतम न्यायालय ने यह मत व्यक्त किया है कि 06 माह से अधिक किसी भी अधिक किसी भी मामले की कार्यवाही को स्थगित नहीं किया जा सकता। 06 माह उपरांत कार्यवाही प्रारम्भ की जानी चाहिए।

इसी संबंध में मा० उच्च न्यायालय द्वारा सरकुलर जारी कर अधीनस्थ न्यायालयों को आदेशित भी किया गया है। अतः माननीय उच्चतम न्यायालय व उच्च न्यायालय के निर्देशों के आलोक में वाद की कार्यवाही आरम्भ की जाती है। अभियुक्त के विरुद्ध *BW* नियत तिथि 21.12.2022 के लिए जारी हो।”

4. Now, the petitioner is before this Court challenging the impugned order dated 21.11.2022 with a prayer to quash the same.

5. The main contention of the petitioner is that the law laid down by the Supreme Court in **Asian Resurfacing of Road Agency Pvt. Ltd. (supra)** shall apply only to cases, where the trial has actually commenced, in the sense that Court has proceeded to frame the charge. It is argued that the trial cannot be deemed as commenced unless charge has already been framed; the law laid down by the Supreme Court shall not apply at the stage of enquiry or investigation, which ordinarily precedes the stage of trial. In this regard, the petitioner has referred to para- 36 of the above judgment of the Supreme Court, which is as below:-

"36. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced."

6. In my opinion, only a short question arises in this case that, whether the "six months stay" shall apply to all the pending proceedings or just to cases where "trial" in its legal sense has commenced? In order to thrash out the controversy, it will be useful to look into *ratio decidendi* which compelled the Supreme Court to pass such an order for general application.

7. The Supreme Court, observed in para- 28 of the judgment in **Asian Resurfacing of Road Agency Pvt. Ltd. (supra)**, as below:-

"28. It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development."

Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be incentive to delay. The order granting stay must show application of mind. The power to grant stay is coupled with accountability."

8. The Supreme Court further observed that wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case and once stay is granted, the proceedings should not be adjourned and should be concluded within two or three months. Having said so, the Supreme Court proceeded to make a very important observation in para- 31, which is as below:-

"31. The wisdom of legislature and the object of final and expeditious disposal of a criminal proceeding cannot be ignored. In exercise of its power the High Court is to balance the freedom of an individual on the one hand and security of the society on the other. Only in case of patent illegality or want of jurisdiction the High Court may exercise its jurisdiction. The acknowledged experience is that where challenge to an order framing charge is entertained, the matter remains pending for long time which defeats the interest of justice."

9. Certain other observations of the Supreme Court appear to be quite material to enable this Court to arrive at the right conclusion. In para-34 of the judgement, the data, as referred to in **Imtiaz Ahmad vs. State of U.P., (2012) 2 SCC 688**, was reproduced by the Supreme Court in its judgment in **Asian Resurfacing of Road Agency Pvt. Ltd. (supra)** as below:-

"(a) As high as 9% of the cases have completed more than twenty years since the date of stay order.

(b) Roughly 21% of the cases have completed more than ten years.

(c) Average pendency per case (counted from the date of stay order till 26-7-2010) works out to be around 7.4 years.

(d) Charge-sheet was found to be the most prominent stage where the cases were stayed with almost 32% of the cases falling under this category. The next two prominent stages are found to be 'appearance' and 'summons', with each comprising 19% of the total number of cases. If 'appearance' and 'summons' are considered interchangeable, then they would collectively account for the maximum of stay orders."

After noting the above scenario, the Court directed :

"55. Certain directions are given to the High Courts for better maintenance of the rule of law and better administration of justice: While analysing the data in aggregated form, this Court cannot overlook the most important

factor in the administration of justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to the High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:

(i) Such an extraordinary power has to be exercised with due caution and circumspection.

(ii) Once such a power is exercised, the High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial."

10. It cannot be, without any reason that the Supreme Court found it fit to refer to the data of the old cases in which the stay was granted. The Supreme Court, in my view, definitely took into consideration the fact that one of the reasons contributing to inordinate delay in disposal of cases and therefore likely erosion of the faith of litigant on legal system, was the grant of stay of proceedings at various stages of a case, which included stages of investigation, inquiry and trial. The Supreme Court noted, probably with dismay, that as much as 32% of the cases were stayed at the most initial stage i.e. filing of charge-sheet, 19% of the cases were stayed at the stage of appearance of the accused or issuance of summons. Not only the above, the Supreme Court noted down that a number of criminal matters were stayed even before the charge-sheet was filed i.e. at the stage of investigation, pursuant to lodging of F.I.R. After noting down the above important data, the Supreme Court cautioned the courts that once the power of "granting stay" is exercised, the courts should take the responsibility to expedite the disposal of the case. The Court further observed that grant of stay at the stage of investigation or at the stage of trial is an extra-ordinary power, which should be exercised sparingly with due caution and circumspection. In the background of aforesaid and the mandate of speedy justice, the Supreme Court noted down the adverse affects of "court granted stays going endless" on the administration of justice in which the society has vital stakes. Therefore, the Supreme Court issued a direction that wherever stay is granted in a proceeding, it shall be deemed as having lapsed automatically after six months, unless of course any specific speaking order has been passed.

11. In **Bengal Immunity Co. Ltd. vs. State of Bihar, 1955-2 SCR 603 at page- 633**, the Court observed that "to decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately

be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute, and construe the language of Section- 2(d) in the light of the indications furnished by them.”

12. Every verdict of the Supreme Court is binding on all the other courts, tribunals and the authorities exercising judicial powers. The pronouncement of the Supreme Court have the authority of law. When the law pronounced by the Supreme Court needs any interpretation, the object behind the same has to be understood. When there is any doubt, regarding actual meanings to be attached to the words used in a verdict, the Judges are allowed to enter into question of policy. The Court may go behind the phrases/words used to find out the real intention or the object. The Court has to see that behind giving such a direction what sort of mischief was intended to be curbed. This, in legal parlance is called "the mischief rule of interpretation". The Judge is expected to make such a construction as suppresses the mischief and adds force and life to the 'cure'.

13. In my opinion, though in para- 36 of the judgment words "pending trial" has been used, but the intention of the Apex Court was to effectuate such direction, in all the civil as well as criminal cases irrespective of the "stage" of the proceeding. The court intended its ruling to apply wherever stay is granted, whether at the stage of investigation or at the stage of inquiry or at the stage of committal or the stages after the trial has commenced in a criminal case. The word "trial" has not been used to signify that the judgment of the Supreme Court shall only apply, where the stage of framing of charge has already reached at. In case such an interpretation is allowed, the very purpose of the judgment shall fail. On the basis of above discussion, I am of a firm opinion that this petition does not have any force and is liable to be dismissed.

14. Accordingly, the petition is **dismissed**.

15. Copy of the order be immediately certified to the court concerned.

Order Date :- 18.9.2023

Saif