

IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKHAT SRINAGAR

Reserved on: 30.06.2022  
Pronounced on: 05.07.2022

CRM(M) No.78/2020

EAPEN CHAKOO

... PETITIONER(S)

*Through: - Mr. M. I. Dar. Advocate*

Vs.

UT OF J&K

...RESPONDENT(S)

*Through: - Ms. AsifaPadroo, AAG*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

- 1) The petitioner has challenged the FIR No.35/2000 for offences under Section 5(1)(c)(d) read with 5(2) of the J&K Prevention of Corruption Act and Section 120-B RPC registered with Police Station, Vigilance Organization, Kashmir.
- 2) It appears that on 09.09.2000, Police Station, Vigilance Organization, Kashmir, on the basis of a reliable information, registered the impugned FIR. As per the information, the officers/officials of Mechanical Division, LAWDA, by misuse of their official position and active connivance with each other, had shown huge amount expenditure on fuel and maintenance of mechanical devices engaged for weeding and dredging by fabricating records when

actually these amounts were not spent and thereby misappropriated the same.

3) The FIR contains two sets of allegations, one pertaining to amount spent on fuel and other pertaining to expenditure on maintenance of mechanical devices engaged for deweeding and dredging. After conducting the investigation, a separate charge sheet relating to allegation regarding expenditure on account of fuel, was filed before the Special Judge, Anticorruption, Kashmir, Srinagar, whereas another charge sheet came to be filed before the same Court in respect of the allegations relating to expenditure on account of maintenance of devices engaged for deweeding and dredging. The petitioner along with other two officers/officials of LAWDA, namely, Mohammad Ramzan Bhat, Xen, and Shri G. L. Chouraisa, AEE, has been impleaded as an accused in the charge sheet relating to expenditure on account of maintenance of devices engaged for deweeding and dredging. The allegations made in this charge sheet against the petitioner are reproduced as under:

- 1. The accused was functioning as M.D. MIS Tebma for the period 12/98 to 8/2000. The supply order have been placed by accused No. 1 and 2 to the firm MIS Tebma headed by the accused. The rates quoted by the firm headed by the accused have been found exorbitant. The spares have been supplied to the LWWI)A on behalf of M.D. as the substantial powers of the firm/company rests with the Managing Director, who has to see the affairs of the company.*
- 2. The rates quoted by the accused supplier firm are not approved by any competent authority nor the company is registered with DGS(Director General Supplies) and the rates quoted are so-moto.*

3. *The company has not manufactured any spare by itself supplied to LWWDA and have procured the same from other sources on low rates and supplied the same to LWWDA on highly exorbitant rates. Exorbitant rates worked on account of Spares supplied by accused supplier firm has been worked out 16,56,725 i.e 172% above from the market rate i.e for the period 12/98 to 11/1999 are Rs.11,45,286/- and for the period 12/99 to 8/2000 are Rs.511,439/- which is loss to the State Exchequer, which has been misappropriated by accused No. 1 and 2 in league with the accused supplier firm headed by the accused as the accused on behalf of the company claimed for release of payment of spates with-held by the LWWDA and thus being in full knowledge of the company.*

4) It has been contended in the petition that the petitioner is not involved in the alleged crime as the allegations made in the charge sheet against him are absolutely false. It is further contended that the rates offered by the petitioner to the LAWDA were genuine and accurate having regard to the quality of spare parts supplied by him. It is also contended that the alleged exorbitant amount has not been released in favour of the petitioner, as such, there has been no loss to the State exchequer and, thus, it cannot be said the offences under Section 5(1)(c)(d) of the J&K Prevention of Corruption Act are made out against the petitioner. It is further contended that even if there was non-adherence to the codal formalities on the part of the officers/officials of the LAWDA at the time of issuing supply order in favour of the petitioner, the same does not amount to criminal misconduct as it is only an irregularity. In order to support these contentions, the petitioner has relied upon the following judgments:

- I) AIR 1977 SC 822;
- II) AIR 1995 SC 3390;
- III) 1979(1) SCC 535;
- IV) 1984 Cr. LJ 1827;

5) The respondent has filed its status report in which, while narrating the allegations made in the charge sheet against the petitioner, it has been contended that the charge sheet against the petitioner has been laid before the Court on 07.06.2005 and the charges against him have been framed on 16.02.2009. It has also been submitted that the trial of the case has substantially progressed and the statements of only two, out of 15 listed prosecution witnesses are to be recorded.

6) I have heard learned counsel for the parties and perused the material on record including the record of the trial court.

7) A perusal of the trial court record which has been summoned reveals that charge sheet against the petitioner and co-accused has been laid before the trial court on 07.06.2005 and the charges against him have been framed on 16.02.2009. It also appears that the petitioner has appeared before the trial court after the filing of the charge sheet on 11.02.2006. The petitioner has filed the present petition on 2<sup>nd</sup> March, 2020. Thus, there is a delay of about 14 years in filing the present petition. In the petition there is no explanation, much less any plausible explanation by the petitioner for the said abnormal delay in filing the present petition under Section 482 of the Cr. P. C. The question arises as to whether it would be proper for this Court to exercise its jurisdiction under Section 482 of the Cr. P. C after such a long delay, particularly when evidence of the prosecution is almost complete.

8) In **Neeraj Bhargava v. State of NCT, Delhi** (Crl. M. C Nos.3844/2015 & Crl. M. Nos.13675-13676/2015 decided on

28.09.2015), the High Court of Delhi has, while considering the aspect of delay in filing a petition under Section 428 of Cr. P. C, held that jurisdiction under Section 482 of Cr. P. C. need not to be exercised in a case where delay has been caused on the part of the petitioner by not challenging the proceedings. In the said case, there was a delay of 19 years in filing the petition under Section 482 of Cr. P. C. It was held that inherent powers of the High Court are meant to prevent the abuse of process of law and to meet the ends of justice, which is available to an aggrieved person to avoid unnecessary delay and to put an end to the proceedings.

9) Again, in **Rajesh Chetwal v. State** (Crl. M. C. No.1656/2011 decided on 24.08.2011), Delhi High Court, while dealing with a similar issue, observed that Section 482 of Cr. P. C starts with a non-obstinate clause and that the High Court is conferred with powers to pass orders to prevent abuse of process of law and to secure the ends of justice. It was also noted that though there is no period of limitation prescribed within which a petition under Section 482 of the Cr. P. C ought to be filed yet, if a petitioner fails to address convincingly the reasons for laches and inordinate delay, the Court would not exercise its jurisdiction under Section 482 of the Cr. P. C, as such a petition should be filed within a reasonable time so that progress of the case is not disturbed at a belated stage. It was further observed that a revision petition challenging an order can be filed within 90 days from the date of order and on that analogy, a period of 90 days should be treated as a

reasonable time to file a petition under Section 482 of Cr. P. C and if it is filed beyond the period of 90 days, the petitioner would have to explain the cause of the delay.

10) In **Gopal Chauhan vs. Smt. Satya**, 1979 Cri. L.J 446, Himachal Pradesh High Court has held that a petition under Section 482 of Cr. P. C and Article 227 of the Constitution of India filed after expiry of three years from the date of summoning ought not to be entertained when the case is fixed for the stage of evidence.

11) The Supreme Court **Londhe Prakash Bhagwan vs. Dattatraya Eknath Mane**, (2013) 10 SCC 627, has held that if no time limit has been prescribed in a statute to apply before the appropriate forum, in that case, the aggrieved person has to come before the Court within a reasonable time.

12) In **Vipin Kumar Gupta v. Sarvesh Mahajan**, MANU/DE/0418 / 2019, the High Court of Delhi observed that if a Court fails to take into consideration delay and laches while invoking the powers of the High Court under Section 482 of the Cr. P. C without any reasonable ground, there would be no end to the litigation, as a consequence whereof, neither any trial would be proceeded nor any trial would be concluded before the trial court.

13) From the aforesaid enunciation of law on the subject, it is clear that a party who invokes the jurisdiction of the High Court for quashing of the FIR and the consequent proceedings on the ground that ingredients of the offence for which he has been booked, are not made out, he has to meet the test of expeditious dispatch of approaching the

Court. A party cannot approach the High Court under Section 482 of the Cr.P.C at his whim and caprice merely because no period of limitation in filing the petition under the aforesaid provision is provided. A petition under Section 482 of the Cr. P. C must be filed within a reasonable time and it should not be vitiated by inordinate delay and laches on the part of the petitioner.

14) Within what time a petitioner should approach the Court under Section 482 of the Cr. P. C depends upon the facts and circumstances of the case. Reasonable time generally means any time which is not manifestly unreasonable and which is fairly necessary for approaching the Court. Reasonable time would mean a time required by a prudent litigant to approach the Court in the given facts and circumstances of the case.

15) Analyzing the facts of the instant case in the backdrop of aforesaid legal position, it is absolutely clear that the petitioner has approached this Court at a highly belated stage after about 14 years of receiving copy of the challan. The petitioner has actively participated in the proceedings before the trial court for all these years and has, after waking up from deep slumber, approached this Court, without any iota of explanation for the delay as per his choice, caprice and whim. Thus, it can by no stretch of imagination be stated that the petitioner has approached this Court within a reasonable time. The prosecution evidence is almost complete and now late in the day, the petitioner wants this Court to exercise its jurisdiction under Section 482 of Cr. P. C,

which, in the facts and circumstances of the case, this Court would be reluctant to do.

16) Thus, without expressing any opinion on the merits of the submissions made by the petitioner, the instant petition is dismissed being highly belated. The petitioner is, however, at liberty to take all the contentions raised in the present petition before the court below at the time of final arguments.

17) A copy of this order be sent to learned trial court for information and compliance.

(SANJAY DHAR)  
JUDGE

Srinagar,  
05.07.2022  
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>