HIGH COURT OF MADHYA PRADESH : JABALPUR

Hearing through Video Conferencing

Misc. Criminal Case No.5472/2021

Ajit Singh Sodha

vs

Union of India

Appearance

Shri Gajendra Singh Gaharwar, learned counsel for the petitioner.

Shri J.K. Jain, learned Assistant Solicitor General for respondent-Union of India.

CORAM :

Hon'ble Shri Justice Prakash Shrivastava

Hon'ble Shri Justice Virender Singh

O R D E R
(13.05.2021)

Per : Virender Singh, J.

This petition under Section 482 CrPC has been filed by the petitioner seeking quashment of entire proceedings of Special case No. 06/2013 qua the petitioner, pending in the Court of Special Judge, CBI, Jabalpur, arising out of FIR No.RC-0092012A0003 dated 23.02.2012, followed by charge-sheet dated 29.11.2013 and the order framing charges under Section 13(2) read with 13(1)(c) & (d) of the Prevention of Corruption Act, 1988 read with Section 120B, 409, 420 and 477A of IPC as the order granting sanction dated 07.11.2013 passed by CMD, Coal India Ltd. Kolkata is bad in law, has been passed without

application of mind and appreciation of the material, which has vitiated the entire proceedings qua the petitioner. On merits also, the quashment is sought for.

2. Brief facts of the case are that on 25-26.09.2011, a team of WCL officials comprising of the officers of WCL vigilance, Production and Surveyors conducted a surprise check at four mines of Ghorawari sub-area colliery of Coal India Limited (CIL) and its subsidiary Western Coalfields Limited (WCL). It was found that during the period from April 2010 to August 2011, the accused persons caused wrongful loss to the CIL/WCL to the tune of Rs. 11,91,19,950/- approx either by showing despatch of inflated quantity or by supplying downgrade coal. It was found that the accused persons dishonestly removed a large quantity of higher grade coal and mixed shale, stone and other impurities to equalize the quantity of higher grade coal and thereby caused extensive grade slippage, which ultimately resulted in the aforesaid financial loss to the CIL/WCL.

3. It was found that the accused persons showed a supply of 2,09,497 MT quantity of B & C grade coal from 01.04.2010 to 31.08.2011 to the power generation plants, while such quantity was not even available at the railway siding. On 01.04.2010, 1570 MT quantity of B & C grade coal was available at Hirdagarh railway siding and a total 1,22,615 MT B & C grade coal was shown to be transported from mines to the railway siding during said period of 01.04.2010 to 31.08.2011. Thus, only 1,24,185 MT quantity of B & C grade coal was available at the

railway siding against the supply of 2.09.497 MT. This means, 85,311 MT quantity was increased by mixing lower grade coal or other extraneous material with the coal of B & C grade. It was also found that no quantity of B & C grade coal was supplied to the power plants.

4. Further, the stock of coal at Ghorawari colliery stockyard and Hirdagarh Railway siding was physically measured and its samples were collected. On physical verification, 1819 MT quantity of "C" grade coal was found short and 3857.346 MT coal was found below grade. This quantity was also considered as short of a quantity of declared grade coal. Thus, compared to book stock, a total 5656.346 MT (1819+3837.345) quantity of coal stock worth Rs.1,09,59,485/- was found short. Similarly, 45,813.6 MT quantity of E grade coal was found short. It was considered that these quantities were misappropriated by the accused persons.

5. It was also alleged that the accused persons dishonestly misappropriated a huge quantity of coal through various illegal acts such as showing false despatch of B & C grade coal, supplying downgraded coal mixed with shale & other inferior material to the power plants, showing inflated book stock of coal against actual coal stock, making false entries in the records etc. To facilitate commission of the alleged crime, the accused persons dishonestly recorded production of 16 & 84% coal of B & C grade respectively from Jharna mine against the quantity of 60 & 40% of the said grades determined for the said mine.

6. A complaint was lodged with the CBI. CBI registered aforesaid FIR No. RC No.0092012A0003 against 3 officers of WCL namely R.K.Choudhary, Sub Area Manager, Ghorawari Sub Area, WCL, Chhindwara; A. Athawale, Colliery Manager of Takianala OC mines and Kothideo OC mines of Ghorawari Sub Area, WCL, Chhindwara and D.P. Singh, Colliery Manager of Jharna UG Mine and Jharna 16/17 OC mines of Ghorawari Sub Area, WCL, Chhindwara. Initially, the petitioner was not made accused in the FIR. However, in the investigation, he was also found responsible for the alleged shortage/defalcation of coal and in the charge-sheet, which was presented on 29.11.2013, based on material collected during the investigation, he (Ajit Singh Sodha) along with another officer Devendra Kumar Choudhary was also arrayed as an accused.

7. The CBI requested the competent authority i.e. Chairman, CIL, Kolkata to grant sanction for prosecuting the accused persons and the same was granted vide order dated 07.11.2013.

8. The SP, CBI/ACB, Jabalpur filed a charge-sheet against the accused persons including the petitioner before the Special Judge, CBI, Jabalpur. A Special Case No.6/2013 was registered. The learned Judge, vide order dated 23.04.2014, framed charges against the accused persons under Sections 13(2) read with Section 13(1)(c) and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Section 120B, 409 and 477 A of IPC and proceeded for trial. It appears from the record that most of the material prosecution witnesses as many as 15 in

numbers have been examined and the trial is in a very advanced stage.

9. Be it noted that the petitioner being aggrieved by the order framing charges dated 23.04.2015 passed by the Special Judge, CBI Jabalpur in Special Case No.06/2013 preferred a Criminal Revision No.883/2014 under Section 397/401 of CrPC before this Court. Vide order dated 18.11.2016, this revision was disposed of by a common order including CRR No.1555/2014 and CRR No.1364/2014 by a Division Bench of this Court observing that prima facie there is sufficient evidence on record to frame the charges against the petitioner. The Bench further observed that it is not proper to appreciate all the evidence in detail at this stage because it will prejudice the trial; hence, no case is made out for quashing the charges framed by the trial Court against the petitioner. The petitioner, however, was set at liberty to produce all the evidence and raise all the grounds and objections before the trial Court during the trial.

10. Thereafter, the petitioner filed another petition No.1896/2017 under Section 482 CrPC before this Court for quashing of entire proceedings arising out of FIR No.RC-0092012A000 dated 23.02.2012, charge-sheet dated 29.11.2013 and order of framing charges against the petitioner dated 23.04.2015. A Division Bench vide order dated 01.03.2017 dismissed this petition also with liberty to the petitioner to raise all the grounds raised in the petition, during the trial.

11. Assailing the order dated 01.03.2017 passed in MCrC

No.1896/2017, the petitioner preferred Special Leave Petition (Criminal) No.3769/2017 before the Hon'ble Supreme Court. Vide order dated 05.05.2017, this SLP was dismissed as withdrawn with liberty to the petitioner to apply for discharge before the trial Court.

12. It is not clear from the record that the petitioner availed this liberty of applying for discharge or not.

13. The learned counsel for the petitioner argued that the purpose of seeking sanction is to protect the officials from the frivolous prosecution and to ensure that the officials may discharge their duties without any fear or favour. The Competent Authority must not act mechanically and must act judiciously. Application of mind and appreciation of material on record must be apparent from the sanction order itself. The sanction cannot be granted on the ground that innocence should be proved in the trial. The Sanctioning Authority cannot shift its burden of protection from prosecution to prove non-involvement/innocence in Court. The sanction order is invalid if it appears from the order that there was total non-application of mind and non-appreciation of the material on record.

14. It is submitted that the sanction order passed by the Sanctioning Authority for prosecuting the petitioner itself shows that it is bad in law as it has been passed mechanically, without application of mind and without properly evaluating the material placed before the Sanctioning Authority along with charge-sheet by the CBI. The Sanctioning Authority has simply reproduced the

facts mentioned in the final report by the Investigating Officer. It did not consider the uncontroverted fact that the petitioner was transferred about one and a half year back from the date on which surprise stock measured by the vigilance team. He was posted there only for two months from April to May 2011 and on the date of handing over the charge, on account of both quality and quantity, the stock of coal was proper. During the period of posting of the petitioner, the overall sales realisation i.e. the profit to the Company was more than Rs.65 Lakhs, which was more than the assessed realization for the said mine. Therefore, no loss was caused to the Company. It is further argued that the coal was weighed at Neemdhana Road Weigh Bridge and was received at Hirdagargh rail siding for transportation of the same by rail to the power plants and the petitioner had no control over both the point.

15. It is asserted that the competent authority, who is well aware of all the technicalities involved in the mining operations, has observed both the facts that the petitioner was transferred long back and the coal stock was well within permissible limit and vide order dated 31.01.2020 allowed the appeal preferred by the petitioner and exonerated him of all the charges levelled against him in the Departmental inquiry.

16. It is further contended that the Sanctioning Authority failed to take into consideration various technical aspects involved in the present case at the stage of grant of sanction. It overlooked all the facts which overwhelmingly negate the involvement of the

petitioner in the alleged offence in any manner whatsoever.

17. It is averred that the Sanctioning Authority has not followed the directives issued by the Government in pursuance to the directions of the Hon'ble Supreme Court in the case of **CBI vs Ashok Kumar Agrawal (2014) 14 SCC 295**. The learned counsel referred to paragraphs 13 to 16 of this judgement.

18. It is further argued that the CBI took check period from 01.04.2010 up to 31.08.2011. It did not include the period from 01.09.2011 up to 25/26.09.2011 when the surprise check was conducted. Out of five officers, who were posted on the date on which surprise check was conducted and the stock was found short, two have been made accused and three others, who were directly responsible, were not made accused for the reasons best known to the CBI.

19. Delay in trial of about 7 years has also been taken as a ground for seeking relief. The learned counsel referred to amended Section 4(4) of the Act, 1988 and the judgements passed in **Som Mittal vs Govt. of Karnataka** (Para 10) **(2008) 3 SCC 574** and **S.G. Nain vs Union of India AIR 1992 SC 603** to bolster his contention. Along with several other documents, the petitioner has also filed copies of the statements of the witnesses examined before the trial Court.

20. Per contra, learned Assistant Solicitor General appearing for the CBI submitted that at the relevant point of time, the petitioner was Manager, Ghorawari Colliery No.1, Sub Area, Kanhan Area, WCL, District Chhindwara. He was responsible for the

production and supply of coal, for maintenance of the stock and records and was having control over the mine and the railway siding. He deliberately did not properly maintain the records. His role came into light during the investigation; therefore, he was impleaded in the charge sheet.

21. Regarding the check period, it is submitted that the period of alleged defalcation has been determined as the check period, therefore, suspicion expressed by the petitioner has no relevance. The names of the accused persons have been determined after the analysis of evidence emerged during the course of the investigation, therefore, non-mentioning of name of the petitioner in the FIR also has no adverse impact on the case of the prosecution.

22. It is also submitted that exoneration in a departmental inquiry does not bear any effect on the criminal proceedings against the petitioner. It is further submitted that the CBI report was sent to the sanctioning authority along with all the material relied upon. It reflects from the sanction order itself that the Sanctioning Authority has considered all the material/evidence submitted before it and on due application of mind, has granted the sanction. It is further submitted that the petitioner has not specifically brought out any defect in the sanction issued by the competent authority against him. The sanctioning authority Shri S. Narsingh Rao is yet to be examined before the trial Court as one of the prosecution witnesses and the petitioner will have ample opportunity to cross-examine him on the sanction order.

23. It is further argued that the grounds submitted by the petitioner are similar to the grounds submitted by him before the trial Court at the time of framing of charges. The trial Court rejected them and the order of the Trial Court has been affirmed by this Court. Thus, the grounds taken by the petitioner have already been examined and considered by this Court. Therefore, no relief as sought for can be granted based on the same set of evidence. On all these grounds, the learned ASG prayed for dismissal of the petition.

24. We have heard rival contentions of both the parties and have gone through the record.

25. It is well settled that interference under Section 482 CrPC for quashing a criminal proceeding should be done very sparingly and in exceptional cases. In the case of State of **Haryana vs Bhajan Lal 1992 Supp (1) SCC 335**, it has been laid down that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the High Courts. While exercising powers under Section 482 CrPC, the Court will weigh or appreciate the evidence to find out its genuineness. The Hon'ble Apex Court laid down the following seven illustrative circumstances under which interference by the High Court may be justified:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out

a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

26. One thing is clear in this case that the petitioner has not questioned the competency of the Sanctioning Authority. His

challenge to the validity of the sanction order is based only on the ground of non-application of mind by the Sanctioning Authority. The law is well settled that such challenge can be made during the trial before the trial Court. In this regards, we can usefully refer to Prakash Singh Badal's case (**Parkash Singh Badal vs State of Punjab (2007) 1 SCC 1**) wherein it is held unequivocally that the question of non-application of mind has to be raised during the trial. Para 48 where their Lordships have concluded and settled the law reads as under:

> "48. The sanction in the instant case related to offences relatable to Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

27. Following the **Parkash Singh Badal**'s case (supra), in **Dinesh Kumar vs Airport Authority of India (2012) 1 SCC 532**, the Hon'ble Supreme Court reiterated that:

> "9. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in Parkash Singh Badal (2007) 1 SCC 1 expressed in no uncertain terms that the absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in Parkash Singh Badal, this Court referred to invalidity of sanction on account of non-application of mind.
>
> 10. In our view, invalidity of sanction where sanction order exists can be raised on diverse grounds

> like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind - a category carved out by this Court in Parkash Singh Badal (supra), the challenge to which can always be raised in the course of trial."

28. The Apex Court continues to follow this legal proposition in **Ashok Kumar Agrawal**'s case (supra) relied upon by the petitioner himself, and said that:

> "59. Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at the pre-trial stage."

29. In the case of **State of M.P. vs Krishna Chandra Saksena (1996) 11 SCC 439**, the Hon'ble Supreme Court has also said that:

> "8. ..... Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order if challenged during the trial. As that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction.. ....."

30. The well settled proposition of law leaves no scope for this Court to interfere with the trial or abort it at this advanced stage on the ground raised by the petitioner.

31. So far as merits of the case are concerned, earlier this matter was brought before this Court by the petitioner himself firstly in the form of challenge to the charges framed by the trial Court against him and secondly by invoking inherent powers of this Court conferred under Section 482. On both occasions, considering the merits, this Court was of the opinion that prima facie a strong case exists against the petitioner and refused to quash the proceedings pending against him. Since the first order was not challenged by the petitioner and challenge to the second order before the Apex Court had been withdrawn, both these orders have attained finality. On the same grounds, therefore, we are not inclined to appreciate the merits again.

32. The judgements rendered in **Som Mittal** and **S.G. Nain** (supra) cases cited by the petitioner to seek the relief sought for on the ground of delay are clearly distinguishable on the facts. In a catena of cases; the Hon'ble Supreme Court has held that though the right to speedy trial flowing from Article 21 is a valuable right, in every case, mere delay in trial cannot be a sole ground to quash any criminal trial that too in the cases of heinous crimes as the cases under the Prevention of Corruption Act. Where infringement of such right is alleged, regard has to be given to all the attaining circumstances, including nature of

offence, number of accused and witnesses, custody period of the accused, workload of the court etc. Each and every delay does not necessarily prejudice the accused. No time limit or any outer time limit for conclusion of all criminal proceedings can be prescribed. In **Sajjan Kumar vs CBI (2010) 9 SCC 368**, after discussing the issue of delay in detail, observing that 'though delay may be a relevant ground, in the light of the materials which are available before the Court through CBI, without testing the same at the trial, the proceedings cannot be quashed merely on the ground of delay. As stated earlier, those materials have to be tested in the context of prejudice to the accused only at the trial.' In this case, the Hon'ble Supreme Court refused to quash the proceedings even after 23 years. This proposition of law is being followed continuously.

33. In the present case, the allegation against the petitioner is that he being a Manager and custodial of the coal mines misappropriated tonnes of the coal extracted from the mines and caused wrongful loss to the tune of crores of rupees to his employer i.e. CIL/WCL. The offence is a complicated one. As per the allegation, it has been committed by interpolation/ manipulation in the entries of documents related to excavation, dispatch and supply of coal to the Power Plant. Nothing has been shown before us that delayed or prolonged trial is unjustified or has caused prejudice to the petitioner to the extent to make the quashing of the trial, without giving a proper opportunity to the prosecution to prove the documents or to establish the charges,

justified. Therefore, here also, we are not inclined to accede to the prayer of the petitioner.

34. In view of the law laid down in **State (NCT of Delhi) vs Ajay Kumar Tyagi (2012) 9 SCC 685** and several other cases, exoneration in departmental inquiry does not entitle the petitioner for quashing of criminal proceedings.

35. Consequently, we hold that the petitioner is not entitled to the relief sought for on any of the ground raised before this Court.

36. The petition sans merits and is **dismissed** accordingly. However, nothing contained herein shall be construed as an expression of opinion on the merits of the case. It shall still be open to the petitioner to raise all such pleas as are available under the law during trial.

(Prakash Shrivastava)
JUDGE

(Virender Singh)
JUDGE

vinod