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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29.11.2018

+CRL.M.C. No.6023/2018 & CrI.M.A. 48310/2018 (Exemption)

N K RAI **PETITIONER**

Through **Ms.Shreya Bhatnagar, Adv.**

versus

CENTRAL BOARD OF INVESTIGATION RESPONDENT

Through **Ms.Rajdipa Behura, Spl.P.P., CBI**
with Ms.Hansika Sahu, Adv. &
Mr.Mohan Kumar, Inspector.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner, the Superintendent of Customs, Customs House, Kolkata seeks quashing of the order dated 23rd April, 2015 passed by the learned Special Court, P.C. Act, (CBI)-06, Patiala House Courts, New Delhi. Under the impugned order, the learned Trial Court while considering the closure report filed by the respondent/CBI, had referred the matter to the respondent for further investigation under Section 173(8) Cr.P.C. with a direction that during the course of further investigation, the records of the case be also placed before the sanctioning authority for consideration of the question of grant of sanction to prosecute the petitioner and four other public servants.

2. At the outset, the learned counsel for the petitioner has been asked to explain the inordinate delay of over three and a half years in approaching the Court. Learned counsel for the petitioner offers

no explanation for the same except for stating that the petitioner decided to file the present petition after becoming aware of the decision of this Court in CrI.M.C. No.2193 of 2015 entitled ***M.S. Pradhan Vs. CBI*** wherein this Court had set aside the very same impugned order viz-a-viz the petitioners therein who are the persons from whom the petitioner is alleged to have taken bribe for being forwarded to his superior officer. Consequently, this Court had set aside the cognizance taken against those petitioners by the learned Trial Court.

3. In my considered opinion, the aforesaid explanation for the inordinate delay in approaching this Court is wholly unsatisfactory but since I have still proceeded to hear the learned counsel for the petitioner on merits, I deem it appropriate to deal with those submissions as well.

4. The learned counsel for the petitioner has besides heavily relying on the decision in the case of ***M.S. Pradhan (supra)***, primarily urged two other grounds. The first being that as per the allegations levelled against the petitioner, he was only a middle man and, therefore, once cognizance taken against Shri Rajesh Sarda, the bribe offerer and Sh.M.S. Badhan, Member, Central Board of Excise & Customs has been set aside, there is no reason as to why the petitioner should be made to face a prolonged trial. She also draws my attention to the closure report wherein one of the reasons stated for filing the closure report was that as per the CBI, the evidence of telephonic conversation which is the basis of the allegations against the petitioner was at best corroborative in nature and, therefore, contends that there was no reason as to why the closure report filed by the CBI should not be accepted qua the petitioner also.

5. The second contention of the learned counsel for the petitioner is that the proceedings are liable to be quashed on the ground of delay itself as even after the passing of the impugned order on 23rd April, 2015, whereby further investigation was directed against the petitioner, no action has been taken against him for the last three and a half years, clearly showing that there is no evidence against him.

6. On the other hand, Ms.Rajeeva Behura, learned Special Public Prosecutor for the respondent/CBI, while opposing the petition vehemently on the ground of delay itself, contends that even the other two submissions of the petitioner deserve to be rejected outrightly. She submits that the petitioner has deliberately withheld vital information from this Court to the effect that after the passing of the impugned order, the competent authority has already accorded sanction to prosecute the petitioner on 7th September, 2016 which sanction stands already filed before the learned Trial Court on 12th September, 2017 and, therefore, contends that in these circumstances, any challenge to the impugned order is not warranted at this stage.

7. Ms.Behura further submits that even otherwise, vide the impugned order, the learned Court while examining the closure report, had given specific directions to the CBI to make further investigation qua the petitioner and four other public servants in accordance with Section 173(8) Cr.P.C. which investigation has been duly carried out but since the competent authority has granted sanction only qua the petitioner and not qua the remaining four public servants, the learned Trial Court has already issued notice to the competent authority to explain the matter of non-grant of sanction in respect of the other four public servants. She, thus,

contends that the respondents are awaiting final orders on the aforesaid aspect before filing a supplementary charge-sheet against the petitioner and it cannot, therefore, be alleged that there is any inaction on their part as is sought to be contended by learned counsel for the petitioner.

8. Ms.Behura further submits that the reliance on the decision of the Court in the case of *M.S. Pradhan (supra)* is wholly misplaced as in the said decision, this Court had after considering the fact that as per the CBI itself, no case was made out against the petitioners therein, set aside the cognizance qua those petitioners which had been directed by the learned Trial Court without there being any evidence against them, whereas in the case of the present petitioner, further investigation has been specifically ordered qua the petitioner and four other public servants.

9. I have carefully considered the submissions of learned counsel for the parties and with their assistance perused the record. Since the petitioner has heavily relied on the decision of this Court in the case of *M.S. Pradhan (supra)*, the same, in the light of the stand of the respondent in the closure report and the directions in the impugned order qua the petitioner. What emerges from the record is that in so far as the petitioner and the other four public servants are concerned, even though the CBI had filed a closure report qua them, the learned Trial Court after examining the entire material on record, had come to a categorical conclusion that the case warranted further investigation qua them.

10. In view of the settled legal position that the closure report is not binding on the learned Trial Court, and the court is in fact expected to apply its independent mind to the material on the record, merely because the CBI had made certain observations

which partially support the petitioner, cannot be a ground to tinker with the directions for further investigation given by the learned Trial Court. A perusal of the decision in the case of *M.S. Pradhan (supra)* clearly shows that the said decision is premised on the fact that once the CBI had filed a closure report, the Court could not, without ordering any further investigation straightway take cognizance against those persons qua whom the CBI had itself categorically stated that there was no evidence. However, the case of the petitioner admittedly does not fall in the said category as further investigation has specifically been directed against him under Section 178(3) Cr.P.C. and, therefore, I fail to understand as to how the said decision is applicable to the case of the petitioner.

10. In the light of the admitted position that vide the impugned order, the learned Trial Court has directed further investigation against the petitioner and four others, merely because cognizance against the bribe offeror has been set aside, cannot be a ground to tinker with the direction executed by the learned Trial Court. The learned Trial Court had after considering the material placed before it, come to a conclusion that the role of the petitioner was different from that of Shri Rajesh Sarda as also Sh.M.S. Pradhan and, therefore, at this premature stage when further investigation has already been carried out by the CBI, it cannot be stated that the proceedings against the petitioner should be quashed.

11. The second submission of learned counsel for the petitioner is equally meritless. In the light of the explanation given by Ms.Behura, learned Spl. P.P. that not only has the sanction from the competent authority for prosecution of the petitioner already been received but even further investigation in terms of the impugned order has already been carried out and the

supplementary charge-sheet against the petitioner has not been filed before the learned Trial Court only because the CBI is awaiting a decision of the Competent Authority for grant/non-grant of sanction to the other four public servants, it cannot be said that there is any inordinate delay on the part of the respondent in taking further action against the petitioner.

12. For the aforesaid reasons, I find absolutely no reason to exercise my extraordinary jurisdiction under Section 482 of the Cr.P.C. . The petition being meritless is dismissed along with the pending application.

(REKHA PALLI)
JUDGE

NOVEMBER 29, 2018/aa