

HENCEFORTH, ALL ORDERS STAYING CIVIL/CRIMINAL PROCEEDINGS WILL AUTOMATICALLY EXPIRE WITHIN 6 (SIX) MONTHS UNLESS EXTENDED FOR GOOD REASON SAYS THE SUPREME COURT OF INDIA

I. INTRODUCTION

The Apex Court, in an order dated 15th October 2020 in *Asian Resurfacing of Road Agency Pvt. Ltd. and Anr. v. Central Bureau of Investigation* [Miscellaneous Application No. 1577 of 2020 in Criminal Appeal Nos. 1375-1376 of 2013] has reiterated that any stay on the civil or criminal proceedings will not continue beyond 6 (six) months and the trial court may proceed in the case without waiting for approval from the higher court, if the stay is not extended.

II. BACKGROUND

Before dealing with the order at hand, it is important to have a cursory glance at the controversial dictum in the case of *Asian Resurfacing of Road Agency Pvt. Ltd. and Anr. v. Central Bureau of Investigation*¹.

➤ Facts:

- (i) A First Information Report dated 7th March 2001 was registered with the Delhi Special Police Establishment under Sections 120-B read with Sections 420, 467, 468, 471 and 477-A of the Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (“**PC Act**”), at the instance of the Municipal Corporation of Delhi (“**MCD**”) against the Appellant and certain officers of MCD. The FIR alleged that the accused had caused wrongful loss to MCD by using fake invoices of certain oil companies pertaining to the purported transportation of bitumen for use in “dense carpeting works” of roads in Delhi during the years 1997 and 1998.
- (ii) After investigation, a charge sheet was filed against the Appellant and other employees of MCD by Central Bureau of Investigation (“**CBI**”) before the Special Judge, CBI on 28th November 2002. The Appellants filed an application for discharge with the Special Judge, CBI. On 1st February 2007, the Special Judge, CBI directed framing of the charges after considering the material before the Court.
- (iii) It was held that there was a prima facie case against the Appellants and the other accused. The Appellants filed Criminal Revision Application No. 321 of 2007 before the Delhi High Court against the order framing charges. The

¹ (2018) 16 SCC 299

revision application was converted into criminal writ petition.

➤ **Decision of the Learned Single Judge:**

(i) The Learned Single Judge referred to two conflicting views taken in earlier Single Bench decisions of the High Court in ***Dharamvir Khattar v. CBI***² and ***R.C. Sabharwal v. Central Bureau of Investigation***³

(ii) In ***Dharamvir Khattar v. CBI***, the view of the Single Bench is as follows:

“32. To conclude this part of the discussion it is held that in the context of Section 19(3)(c) the words “no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial...” includes an interlocutory order in the form of an order on charge or an order framing charge. On a collective reading of the decisions in V.C. Shukla⁴ and Satya Narayan Sharma⁵, it is held that in terms of Section 19(3)(c) of the PC Act, no revision petition would be maintainable in the High Court against order on charge or an order framing charge passed by the Special Court.

33. Therefore, in the considered view of this Court, the preliminary objection of the CBI to the maintainability of the present petitions is required to be upheld...”

(iii) In ***R.C. Sabharwal v. Central Bureau of Investigation***, another Learned Single Judge held that *“even though no revision may lie against an interlocutory order, there was no bar to the constitutional remedy under Article 226 and 227 of the Constitution. At the same time, power under Section 482 could not be exercised in derogation of express bar in the statute in view of the decisions of this Court in CBI v. Ravi Shankar Srivastava⁶, Dhariwal Tobacco Products Ltd. v. State of Maharashtra⁷, Madhu Limaye v. State of Maharashtra⁸, Krishnan v. Krishnaveni⁹, State v. Navjot Sandhu¹⁰”.*

(iv) The Learned Single Judge opined that the trial of corruption cases takes up to 20 years for completion and the primary reason for such state of affairs is that the moment charge is framed, the trial lands in the High Court and the order on charge is invariably assailed. The High Court being flooded with

² 2009 SCC OnLine Del 1292

³ 2010 SCC OnLine Del 3

⁴ 1980 SCC (Cri) 695

⁵ (2001) 8 SCC 607

⁶ (2006) 7 SCC 188

⁷ (2009) 2 SCC 370

⁸ (1977) 4 SCC 551

⁹ (1997) 4 SCC 241

¹⁰ (2003) 6 SCC 641

such revision petitions would take a number of years to decide such revision petitions on charge, which leads to the trials being stayed indefinitely. Whilst considering the prevalent state of affairs along with the authority laid down in ***Dharamvir Khattar v. CBI***, the Court had come to the conclusion that no revision against the order framing charge or order directing framing of charge would lie. Similarly, a petition under Section 482 Cr.P.C. would also not lie. The Learned Single Judge further expressed that if the Court holds that a petition under Article 227 would be maintainable, the result would be that every order on charge which would earlier be assailed by way of revision would instead be assailed under Article 227 of the Constitution of India. Consequently, proceedings before the trial court would once again not proceed.

- (v) The Learned Single Judge further held that if this Court entertains a petition under Article 227 of the Constitution of India, it would require the Court to re-appreciate the evidence collected by the CBI to see if the charge was liable to be framed and the Court would be doing so contrary to legislative intent. The Learned Single Judge elaborated that no court could appreciate arguments advanced in a case on a charge without going through the entire record.
- (vi) In light of the aforesaid view taken by the Learned Single Judge regarding the maintainability of a writ petition under Article 227 of the Constitution of India, and in view of the divergent positions of law in ***Dharamvir Khattar v. CBI*** and ***R.C. Sabharwal v. Central Bureau of Investigation***, the matters were referred to the Division Bench. The question of law which was referred by the Learned Single Judge to the Division Bench was as follows:

“Whether an order on charge framed by a Special Judge under the provisions of Prevention of Corruption Act, being an interlocutory order, and when no revision against the order or a petition under Section 482 of Cr.P.C. lies, can be assailed under Article 226/227 of the Constitution of India, whether or not the offences committed include the offences under Indian Penal Code apart from offences under Prevention of Corruption Act?”

➤ **The questions of law framed by the Division Bench for consideration were as follows:**

- (i) *“Whether an order framing charge under the Prevention of Corruption Act, 1988 would be treated as an interlocutory order thereby barring the exercise of revisional power of this Court?”*
- (ii) *Whether the language employed in Section 19 of the Prevention of Corruption Act, 1988 which bars the revision would also bar the exercise of*

power under Section 482 of the Code of Criminal Procedure for all purposes?

(iii) *Whether the order framing charge can be assailed under Article 227 of the Constitution of India?"*

➤ **Questions of law answered by the Division Bench:**

After discussing the law on the above points, the Division Bench held as under:

- a) *"An order framing charge under the Prevention of Corruption Act, 1988 is an interlocutory order.*
- b) *As Section 19(3)(c) clearly bars revision against an interlocutory order and framing of charge being an interlocutory order a revision will not be maintainable.*
- c) *A petition under Section 482 of the Code of Criminal Procedure and a writ petition preferred under Article 227 of the Constitution of India are maintainable.*
- d) *Even if a petition under Section 482 of the Code of Criminal Procedure or a writ petition under Article 227 of the Constitution of India is entertained by the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act.*
- e) *The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional circumstances be exercised keeping in view the law laid down in Siya Ram Singh¹¹, Vishesh Kumar¹², Khalil Ahmed Bashir Ahmed¹³, Kamal Nath¹⁴, Ranjeet Singh¹⁵ and similar line of decisions in the field.*
- f) *It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a "cloak of an appeal in disguise" or to reappreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice."*

¹¹ Chandrashekhar Singh v. Siya Ram Singh, (1979) 3 SCC 118

¹² Vishesh Kumar v. Shanti Prasad, (1980) 2 SCC 378

¹³ (1988) 1 SCC 155

¹⁴ M.C. Mehta v. Kamal Nath, (2000) 6 SCC 213

¹⁵ Ranjeet Singh v. Ravi Prasad, (2004) 3 SCC 682

➤ **Criminal Appeal Nos. 1375-1376 of 2013 preferred before the Apex Court challenging the judgement of the Division Bench:**

Submissions before the Apex Court:

- (i) The Appellants submitted that the High Court had erred in holding that the order framing charge was an interlocutory order.
- (ii) It was further also argued that since the petitions under Section 482 of the Cr.P.C and under Article 227 of the Constitution of India has been held to be maintainable, there could be no prohibition against interference by the High Court or the power of the High Court to grant stay in spite of prohibition under Section 19(3)(c) of the Prevention of Corruption Act, 1988.
- (iii) The Respondent primarily argued that the order framing charge is an interlocutory order. Staying the proceedings would be against the objects of the Prevention of Corruption Act, 1988, since matters of such public importance ought to be decided with utmost despatch and at the earliest instant.
- (iv) The Respondent also raised a contention that the expression “on any other ground” used in Section 19(3)(b) of the Prevention of Corruption Act, 1988, refers to and relates to all grounds that are available in proceedings under the said Act, other than grounds which relate to sanction granted by the Authority.

Judgement of the Apex Court delivered on 28th March 2018:

- (i) The Hon’ble Supreme Court relied upon the authority laid down in *Madhu Limaye v. State of Maharashtra*¹⁶ and observed that the legislative intent behind the bar to revisional jurisdiction provided under Section 397(2) was to put a check on delay in the final disposal of criminal proceedings. Thus, the inherent powers of the High Court provided under Section 482 of Cr.P.C. ought to be preserved and remain unfettered by any other provision.
- (ii) The Court further relied upon *Satya Narayan Sharma v. State of Rajasthan*¹⁷ and *State v. Navjot Sandhu* wherein it was observed that a petition under Section 482 of the Cr.P.C. will lie to the High Court even when there is a bar under Section 397 or some other provisions of the Cr.P.C. However, inherent powers could be exercised only when there is abuse of the process of court or where interference is absolute necessary for securing

¹⁶ (1977) 4 SCC 551

¹⁷ (2001) 8 SCC 607

the ends of justice. The inherent powers must be exercised very sparingly where proceedings have been initiated illegally, vexatiously or without jurisdiction.

- (iii) The Court also relied upon *Amar Nath v. State of Haryana*¹⁸ and reiterated that the power conferred upon the High Court under Section 482 of the Cr.P.C should be exercised sparingly and cautiously. However, in order to meet the ends of justice, this inherent power should be exercised irrespective of anything contained under Section 397(2) of the Cr.P.C.
- (iv) The Hon'ble Court further relied upon several other authorities and concluded that the High Court has appropriate jurisdiction to consider the challenge against an order framing charge including passing an order granting stay. The Apex Court further stated how this power needs to be exercised and evaluated, in order to address the issue of pendency of cases.
- (v) The Apex Court also relied upon *CCE v. Dunlop India Ltd.*¹⁹ and *Siliguri Municipality v. Amalendu Das*²⁰ wherein it has been observed that *"it is well accepted that delay in a criminal trial, particularly in cases under the Prevention of Corruption Act, 1988, has a 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. The Court further observed that even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint and that there being a mere prima facie case is not enough. The Court observed that the party seeking stay must be put to terms and that stay should not be an incentive to delay the proceedings. The court further observed that the order granting stay must show application of mind as the power to grant stay is coupled with accountability"*.
- (vi) The Court further observed that wherever stay is granted, a speaking order must be passed showing that the case is of an exceptional nature and the delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned and must be concluded within two-three months. If a stay is granted by the High Court, this needs to be decided on a day to day basis by the Court so that there is no undue delay in the proceedings.

Having observed as above, the Apex Court issued the following directions with respect to pending cases:

¹⁸ (1977) 4 SCC 137

¹⁹ (1985) 1 SCC 260

²⁰ (1984) 2 SCC 436

- (i) In all pending cases where stay against proceedings of a civil or criminal trial is operating, such stay will come to an end upon the expiry of 6 (six) months from the date of the judgment of the Apex Court i.e. 28th March 2018; unless in an exceptional case, by a speaking order, such stay is extended.
- (ii) In cases where stay is granted in future, such stay will end upon the expiry of 6 (six) months from the date of such order unless a similar extension is granted by a speaking order.
- (iii) The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized.
- (iv) The trial court before which the order of stay of civil or criminal proceedings is produced, may fix a date not beyond 6 (six) months from the date of the order of stay so that upon expiry of the period of stay, proceedings can resume unless an order of extension of stay is produced.

Concurring view by Justice R.F. Nariman:

While agreeing with the submissions made by the Respondent, the Hon'ble Judge reasoned that Section 19(3)(b) would show that the interdict against stay of proceedings under the Prevention of Corruption Act, 1988 on the ground of any error, omission or irregularity in the sanction granted by the authority is lifted, if the Court is satisfied that the error, omission or irregularity has resulted in a failure of justice. Having said this, clause (c) says that no court shall stay proceedings under this Act on any other ground.

The Hon'ble Judge further reckoned that Section 19(3)(b) subsumes all grounds which are relatable to sanction granted which is clear from the word "*any*" making it clear that whatever be the error, omission or irregularity in the sanction granted, all grounds relatable thereto are covered. The Hon'ble Judge also noted that "*in the sanction granted by the authority*" is visible by its absence in clause (c), thereby, suggesting that it is the proceedings under the Prevention of Corruption Act, 1988 that have been referred to. The expression "*on any other ground*" covers all the grounds other than the ones pertaining to the sanction granted by the authority.

- Despite the aforesaid judgment, the Additional Chief Judicial Magistrate, Pune, passed an order stating that the "*lower Court cannot pass any order which has been stayed by the Hon'ble High Court, Bombay with due respect of ratio of the judgement in Asian Resurfacing of Road Agency Pvt. Ltd. & Anr.*" thereby refusing to conduct trial. Pursuant thereto, the Appellant filed Miscellaneous Application No. 1577 of 2020 in the aforesaid Criminal Appeal Nos. 1375-1376 (*Asian Resurfacing of Road Agency Pvt. Ltd. and Anr. v. Central Bureau of*

Investigation) challenging the Order dated 4th December 2019 passed by the Additional Chief Judicial Magistrate, Pune.

III. THE APEX COURT PASSED THE FOLLOWING ORDER ON 15TH OCTOBER 2020 IN THE ABOVEMENTIONED APPLICATION:

- (i) The 3-judge bench presided by Hon'ble Justice R. F. Nariman, Hon'ble Justice Navin Sinha and Hon'ble Justice K. M. Joseph passed an order *inter alia* reminding the Magistrates all over the country that in the pyramidal structure under the Constitution of India, the Supreme Court is at the apex, and the High Courts, though not subordinate administratively, are certainly subordinate judicially.

- (ii) The Apex Court has held as follows:

"35. In cases where stay is granted in future, the same will end on expiry of 6 (six) months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond 6 (six) months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced."

- (iii) The Court, further stated that:

"Learned Additional Chief Judicial Magistrate, Pune, by his order dated 04.12.2019, has instead of following our judgment in letter as well as spirit, stated that the Complainant should move an application before the High Court to resume the trial. The Magistrate goes on to say: "The lower Court cannot pass any order which has been stayed by the Hon'ble High Court, Bombay with due respect of ratio of the judgment in Asian Resurfacing of Road Agency Pvt. Ltd. & Anr. (supra)." We must remind the Magistrates all over the country that in our pyramidal structure under the Constitution of India, the Supreme Court is at the Apex, and the High Courts, though not subordinate administratively, are certainly subordinate judicially. This kind of orders fly in the face of para 35 of our judgment. We expect that the Magistrates all over the country will follow our order in letter and spirit. Whatever stay has been granted by any court including the High Court automatically expires within a period of 6 (six) months, and unless extension is granted for good reason, as per our judgment, within the next 6 (six) months, the trial Court is, on the expiry of the first period of 6 (six) months, to set a date for the trial and go ahead with the same."

- (iv) Thus, the Hon'ble Court reiterated that where stay has been granted by any court including the High Court, such stay shall automatically expire within a period

of 6 (six) months, and unless extension is granted for good reason within the aforesaid 6 (six) month period, the trial Court must go ahead with the trial.

- (v) With this observation, the order dated 4th December 2019 was set aside with a direction to the Learned Additional Chief Judicial Magistrate, to set down the case for hearing, immediately.

IV. CONCLUSION:

The Judgement dated 28th March 2018 and Order dated 15th October 2020 of the Apex Court certainly come as a welcome relief to litigants across the country. Auto expiration of stay orders creates a perception of informal deadlines thus reducing unnecessary and/ or willful delays. These are perceived as a step towards restoring the faith of the average Indian in the Rule of Law and judiciary as the lower Courts will now be encouraged and even nudged to conduct trials in a time bound manner lest the Plaintiff should stand to lose the interim protection granted. Having stated thus, one will have to weigh the pros and cons of such deadlines in due course as there will be ramifications due to sudden lapse of interim protection provided by means of stay orders.

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