(2025) 12 OHC CK 0071

Orissa HC

Case No: Criminal Miscellaneous Petition No. 1526 Of 2024

Doaba Industrial & Trading Company Pvt. Ltd. And Another		APPELLANT
	Vs	
Republic Of India, Central Bureau Of Investigation, BBSR And Another		RESPONDENT

Date of Decision: Dec. 8, 2025

Acts Referred:

- Constitution Of India, 1950-Article 21
- Indian Penal Code, 1860-Section 120B, 3749, 406

Hon'ble Judges: Chittaranjan Dash, J

Bench: Single Bench

Advocate: A. Pattnaik, S. Nayak

Final Decision: Disposed Of

Judgement

Chittaranjan Dash, J

1. By means of this application, the Petitioners seek quashing of FIR No. RC 52(S)/94 registered by Opposite Party No.1-CBI, along with all consequential actions/proceedings arising therefrom, including Charge-Sheet No.4 dated 31.03.1995 and the ongoing criminal trial/proceedings against Petitioner No.1 in S.P.E. No.32 of 1994 pending before the court of the Special Judge, C.J.M. (CBI), Bhubaneswar.

2. The background facts, as briefly stated, are that Petitioner No.1, a company incorporated under the Companies Act, was implicated in connection with the aforesaid FIR and Charge-Sheet No.4 dated 31.03.1995 on the allegation that, while functioning as the Clearing and Forwarding Agent of M/s. National Aluminium Company (hereinafter “NALCO”), a public sector undertaking, it had been entrusted with handling export consignments at Paradip Port pursuant to a tender for the period from 20.06.1991 to 19.06.1993. Under the terms of the tender dated 20.06.1991, the

obligations of Petitioner No.1 included, inter alia, unloading NALCO's export material at Paradip Port, stacking the same in the open yard allotted to NALCO by Paradip Port Trust Authority, supervising stuffing of the material into containers by the Port authorities, taking necessary precautions for the safety of the material prior to stuffing, lodging police reports and filing claims in the event of theft, liaising with concerned authorities, and maintaining accounts of material received, stuffed, and lying at the port. NALCO was entitled to recover any loss caused to the material due to negligence of Petitioner No.1. Separately, NALCO had engaged M/s. Marin Surveyors & Consultancy Ltd. ("MARCONS") to supervise export activities at Paradip Port, including stock-taking of incoming and outgoing material and forwarding daily stock statements to NALCO. The aluminium ingots received from NALCO's Angul factory were stored in open yards/sheds under the custody of Paradip Port Trust Authority and guarded by CISF personnel.

It is alleged that the regular stock statements submitted by Petitioner No.1 and MARCONS did not indicate any shortage until 04.09.1993. However, in a joint physical verification conducted on 04.09.1993 by officers of NALCO in the presence of both firms, a shortage of 46.943 MT of standard ingots and 5.866 MT of SOW ingots was detected, valued at approximately Rs.32.7 lakhs, giving rise to the allegation that both firms had misappropriated entrusted property. Treating the above as constituting a cognizable offence under Sections 120-B/406 IPC, the FIR was registered by the Deputy Superintendent of Police, CBI, Bhubaneswar.

Upon an earlier enquiry, the Chartered Accountant M/s. Mohapatra & Mohapatra had also reported shortage of aluminium ingots valued around Rs.30 lakhs, pursuant to which Paradip P.S. Case No.175 of 1993 was registered under Section 379 IPC. A complete stock verification was thereafter conducted on 04.09.1993 in the presence of representatives of Petitioner No.1, MARCONS, and NALCO's Internal Auditors. The physical stock was found to be 700.98 MT of standard ingots and 348.747 MT of SOW ingots. When compared with the book balance, shortages of 16.943 MT of standard ingots and 5.866 MT of SOW ingots were noted. Paradip P.S. Case No.175 of 1993 was ultimately closed as a "false case" under Section 379 IPC, with a finding that the matter disclosed criminal misappropriation rather than theft. Considering the entrustment of goods to Petitioner No.1 and MARCONS, both firms were held prima facie liable for criminal breach of trust, and a charge-sheet under Section 406 IPC was submitted, on which cognizance was taken on 31.07.1995.

Petitioner No.1 and its Director-cum-General Manager thereafter moved for discharge, which came to be rejected on 29.06.1996. Criminal Revision No.543 of 1996 and Criminal Misc. Case No.503 of 1997 were filed before this Court challenging the relevant orders. Opposite Party No.2, also arrayed as an accused in the CBI charge-sheet, filed Criminal Misc. Case No.613 of 2004 challenging the order dated 13.02.2004 taking cognizance. This Court dismissed the said petition on 08.03.2006 while reserving liberty to raise pleas at the stage of framing of charge. A discharge petition filed by Opposite Party No.2 on 04.08.2006 was dismissed on 21.11.2008. By judgment dated 19.08.2002, this Court dismissed Criminal Misc. Case Nos.503 of 1997 and 543 of 1996 except to the extent of quashing cognizance against Shri P.R. Maniktala.

Petitioner No.1 again filed multiple discharge petitions, all of which were dismissed by the learned trial court, leading to Criminal Revision Nos.1209 of 2010, 1428 of 2010, and 548 of 2011 being instituted. In Crl. Revision No.548 of 2011, this Court stayed further proceedings on 27.07.2011. Though the trial later resumed in view of the decision of the Hon'ble Supreme Court in Asian Resurfacing of Road Agency Pvt. Ltd. vs. CBI, reported in (2018) 16 SCC 299, the trial court has examined only four out of seventeen witnesses, three having expired and two remaining untraceable. According to the Petitioners, they have been subjected to over three decades of criminal prosecution in what is essentially a civil dispute, and the second FIR registered by the CBI along with the consequential proceedings are illegal and arbitrary.

3. Mr. Pattnaik, learned counsel for the Petitioners, relying upon a series of decisions of the Hon'ble Supreme Court, contends that the inordinate delay of more than three decades in the conduct of the present prosecution has caused grave and irremediable prejudice to the Petitioners. It is urged that several defence witnesses have either expired or become untraceable, and that the fading of memories and loss of material evidence over such a prolonged period would render any further continuation of the trial inherently unfair. Learned counsel submits that the right to a speedy trial is an integral facet of Article 21 of the Constitution, and the extraordinary delay in the instant case strikes at the very root of a fair criminal process, warranting interference by this Court. Placing reliance on the decisions in Hussainara Khatoon vs. Home Secretary, State of Bihar, AIR 1978 SC 579; Sheela Barse vs. Union of India, AIR 1986 SC 1773; Abdul Rehman Antulay vs. R.S. Nayak, AIR 1992 SC 1701, among other decisions, it is submitted that where delay in prosecution is so oppressive as to defeat justice, the only appropriate relief is to bring the proceedings to an end. It is accordingly urged that the FIR, charge-sheet, and all consequential proceedings are liable to be quashed.

4. Mr. S. Nayak, learned Senior Advocate, Retainer-cum-Special Public Prosecutor appearing for the CBI, vehemently opposes the submissions advanced on behalf of the Petitioners. It is contended that the delay in conclusion of the trial is wholly attributable to the Petitioners, who, by assailing almost every interlocutory order before this Court, effectively impeded the progress of the proceedings. Learned counsel submits that the prosecution has at no stage been lax or indifferent in conducting the trial. He further asserts that, if afforded a period of three months, the CBI is fully prepared to examine all its remaining witnesses and bring the prosecution evidence to a close.

5. Upon perusal of the record, it appears that although the charge-sheet was filed within two years of registration of the FIR, the Petitioners have, in the interregnum, instituted nearly seven Criminal Revisions and four Criminal Miscellaneous Cases challenging various interlocutory orders, thereby contributing substantially to the prolongation of the trial. Out of seventeen witnesses cited by the prosecution, only four have been examined till date, while three witnesses have admittedly expired.

It is well settled that the right to a speedy trial, though a facet of Article 21, does not mandate that every delay must result in the termination of proceedings. The Hon'ble Supreme Court in a catena of decisions has held that the question whether delay infringes the right to a speedy trial is to be

determined on a balancing of several factors, including the nature of the offence, the length and reasons for the delay, and whether the accused themselves contributed to or benefited from such delay. However, there can be no mechanical or time-bound quashing of proceedings solely on the ground of delay and that each case must be assessed on its own facts. Therefore, delay attributable to the accused cannot constitute a ground for terminating the prosecution.

6. In the present case, the materials on record abundantly demonstrate that the Petitioners themselves have been responsible, to a significant extent, for the delay in progress of the trial by continuously challenging the orders of the learned trial court. The delay, therefore, cannot be attributed solely to the prosecution or to any systemic lapse.

7. Be that as it may, in view of the submission of Opposite Party No.1 expressing readiness to produce the remaining prosecution witnesses and complete the examination of its evidence within a period of three months, this Court considers it appropriate to permit the same. The learned trial court shall accordingly ensure that the prosecution evidence is closed within the aforesaid time-frame. In the event Opposite Party No.1 fails to adhere to its undertaking, the Petitioners shall be at liberty to approach this Court for appropriate orders.

8. With the above observation, the CRLMP stands disposed of.