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

**Judgment reserved on: 07.07.2022**

**Judgment pronounced on: 14.10.2022**

+ **W.P.(CRL) 781/2021**

DR SARBESH BHATTACHARJEE ..... Petitioner  
Through: Ms. Arundhati Katju, Mr. Mohammad  
Ali Choudhary, Ms. Shrishti Borthakur, Advs.  
versus  
STATE NCT OF DELHI ..... Respondent  
Through: Mr. R.S. Kundu, Ld. ASC with Mr.  
N. Kumar, Mr. M. Dagar, Mr. A. Singh, Mr. N.  
Dagar, Advs.

+ **W.P.(CRL) 785/2021 & CRL.M.A. 5717/2021**

DR SARBESH BHATTACHARJEE ..... Petitioner  
Through: Ms. Arundhati Katju, Mr. Mohammad  
Ali Choudhary, Ms. Shrishti Borthakur, Advs.  
versus  
STATE NCT OF DELHI ..... Respondent  
Through: Mr. R.S. Kundu, Ld. ASC with Mr.  
N. Kumar, Mr. M. Dagar, Mr. A. Singh, Mr. N.  
Dagar, Advs.

+ **W.P.(CRL) 786/2021 & CRL.M.A. 5719/2021**

DR SARBESH BHATTACHARJEE ..... Petitioner  
Through: Ms. Arundhati Katju, Mr. Mohammad  
Ali Choudhary, Ms. Shrishti Borthakur, Advs.  
versus  
STATE NCT OF DELHI ..... Respondent  
Through: Mr. R.S. Kundu, Ld. ASC with Mr.  
N. Kumar, Mr. M. Dagar, Mr. A. Singh, Mr. N.  
Dagar, Advs.

**CORAM:  
HON'BLE MR. JUSTICE JASMEET SINGH**

**J U D G M E N T**

**JASMEET SINGH, J**

1. These are writ petitions which are being disposed of by a common order.
2. The petitioner in the above writ petitions has sought quashing of the following FIRs:
  - a. FIR No. 01/2012 dated 10.01.2012 registered at PS Anti Corruption Branch under Section 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 (hereinafter "PC Act") and Section 420/120B Indian Penal Code, 1860 (hereinafter "IPC") and proceedings emanating therefrom in W.P.(CRL) 786/2021;
  - b. FIR No. 02/2012 dated 10.01.2012 registered at PS Anti Corruption Branch under Section 13(1)(d)/13(2) of the PC Act and Section 420/468/471/120B IPC and proceedings emanating therefrom in W.P.(CRL) 781/2021;
  - c. FIR No. 04/2013 dated 16.02.2013 registered at PS Anti Corruption Branch under Section 13(1)(d)/13(2) of the PC Act and Section 420/468/471/120B IPC and proceedings emanating therefrom in W.P.(CRL) 785/2021.
3. The factual matrix of the case as per the petitioner is as under:
  - a. The Petitioner had a career of around 36 years as a medical officer under the Govt. of Arunachal Pradesh, the Assam Rifles, and finally the Central Govt. Health Services.
  - b. The petitioner was transferred to Delhi Government and was posted as

Director, Health Services (“DHS”) on 26.08.2009. Subsequently, he was posted as Medical Superintendent, Deen Dayal Upadhyay (DDU) Hospital on 10.03.2011 and was to retire on 31.01.2012 on attaining superannuation.

- c. The petitioner was suspended from service on 02.11.2011, just 3 months prior to his date of retirement. Being aggrieved by the suspension, the petitioner filed an Original Application No. 4087/2011 before the Central Administrative Tribunal (CAT), Principal Bench, New Delhi. *Vide* order dated 23.12.2011, the learned CAT was pleased to quash and set aside the suspension orders dated 02.11.2011 and 28.11.2011.
- d. Since the order dated 23.12.2011 was not implemented and the retirement dated of the petitioner was approaching on 31.01.2012, the petitioner filed a Contempt Petition No. 06/2012 titled ‘*Dr. Sarbesh Bhattacharjee v. Sh. Anshu Prakash & Ors.*’ before the learned CAT.
- e. Thereafter, the FIR No. 01/2012 and impugned FIR No. 02/2012 were filed against the petitioner on the same date i.e., 10.01.2012.
- f. Following are the FIRs registered against the petitioner:-

FIR Details	Date
FIR No. 01/2012 registered at PS Anti Corruption Branch under Section 13(1)(d)/13(2) of PC Act and Section 420/120B IPC	10.01.2012
FIR No. 02/2012 registered at PS Anti Corruption Branch under Section 13(1)(d)/13(2) of PC Act r/w section 420/468/471/120B IPC	10.01.2012

FIR No. 04/2013 registered at PS Anti Corruption Branch under Section 13(1)(d)/13(2) of PC Act and Section 420/468/471/120B IPC	16.02.2013
RC/DAI/2014/A/0036 P.S. ACB under Section 13(1)(d)/13(2) of the PC Act read with Section 420/468/471/120B IPC	22.08.2014

- g. All the above-mentioned FIRs emanate from the same tender inquiry No. 2/DHS/CPA/2009 relating to the procurement of different medical equipment.
- h. As far as the order dated 23.12.2011 of CAT is concerned, the same was challenged by the Department of Family Health and Welfare preferred W.P.(C.) No. 249/2012 titled '*Department of Health and Family Welfare v. Dr. Sarbesh Bhattacharjee & Ors.*' and the operation of the order dated 23.12.2011 was stayed.
- i. Hence, on 06.02.2012, the learned CAT was pleased to close the contempt matter with liberty to the petitioner to revive the Contempt Petition if the occasion so arose.
- j. Thereafter, the petitioner has been repeatedly called for investigation and he has been cooperating with the investigating agencies.
- k. The petitioner has been granted bail in the FIR No. 01/2012 on 01.06.2012. The petitioner was granted interim protection in the FIR No. 02/2012 on 04.01.2013 and thereafter anticipatory bail on 23.01.2013. On 17.07.2013, the order of 23.01.2013 was made absolute. On 20.05.2013, the petitioner was granted interim protection was in FIR No. 04/2013. He was further granted anticipatory bail vide order dated 12.08.2013.

- l. On 08.04.2013, the W.P.(C) No. 249/2012 titled '*Dept. of Health and Family Welfare v. Sarbesh Bhattacharjee*' was dismissed.
- m. On 22.08.2014, yet another FIR No. RC/DAI/2014/A/0036 registered at P.S. ACB under Section 13(1)(d)/13(2) PC Act read with Section 420/468/471/120B IPC was registered against the petitioner regarding the same tender. The Petitioner challenged the same by filing Writ Petition (Crl.) No. 784/2021. This court in the order of 29.07.2021 recorded that "*The charge sheet has already been filed in the Court of learned C.M.M.; the trial is at the stage of recording of prosecution evidence and the next date before the learned Trial Court is 13<sup>th</sup> September 2021. It is thus evident that in the RC/DAI/2014/A/0036 of which the petitioner seeks quashing, no charge sheet has been filed against the petitioner and even while taking the cognizance, the petitioner was not summoned as an accused in view of the fact that there was no material to substantiate that he had committed any offence, as alleged.*" Thus, the Writ Petition was dismissed by this Hon'ble Court as infructuous.
- n. As per the petition, it is stated that after the suspension of the petitioner, there has been no departmental inquiry against the petitioner and never received any charge sheet or memorandum of charge sheet in relation to the Tender Inquiry No. 2/DHS/CPA/2009.

*Allegations in FIR No. 01/2012 :*

- o. The impugned FIR no. 01/2012, P.S. Anti-Corruption Branch, under section 13(1)(d)/13(2) Prevention of Corruption Act read with Section 420/120-B IPC alleged that a contract for supply of sterile gloves was

awarded to M/s. MRK Healthcare vide Tender dated 07.04.2010 for a period of two years i.e. from 09.04.2010 to 08.04.2012.

p. The FIR No. 01/12 further alleged that:

- M/s. MRK Healthcare were to furnish a security deposit calculated on the following basis:

$$[\text{Quantity of items}] \times [\text{Rate per unit}] \times 5 \%$$

As per the prosecution case, Rs. 18 lakhs were to be deposited by M/s. MRK Healthcare whereas they deposited only Rs. 3 lakhs.

- The gloves were to be supplied through M/s. Pharmatek (India), distributors of M/s. MRK Healthcare. Vide letter dated 20.10.2010, M/s. MRK Healthcare informed that M/s. Pharmatek (India) had ceased to be their distributor with immediate effect and supply orders against the CPA contract may be placed with it directly, however, it is alleged by the investigating agency that vide letter dated 27.10.2010 M/s. MRK Healthcare informed BSA Hospital, Rohini that M/s. Pharmatek (India) were their distributors.
- M/s. MRK Healthcare allegedly sought to cancel the contract on the ground that excess order had been placed on them in the first year and they could not continue to supply at the contract rate. The co-accused Dr. D.S. Rao is alleged to have cancelled the contract, forfeited the earnest money deposit of Rs. 3 lakhs and informed all the Directors/Medical Superintendents intimating them of the cancellation of the rate contract, mentioning the reason behind the decision and requesting them to make their own arrangement for procurement of sterile gloves.
- The hospitals then allegedly purchased sterile gloves from the open

market including from M/s. MRK Healthcare which is alleged to have caused a loss to the exchequer of 98,98,391/-.

Allegations in FIR No. 02/2012 :

- q. The allegations in the impugned FIR No. 02/2012 are that in 2009, surgical tender was initiated by the Chief Medical Officer (“CMO”), CPA, GNCT of Delhi to finalize the rate contract of drugs and surgical consumables for all hospitals and other health establishment under GNCT. It was the responsibility of the CPA to finalize the rates, pursuant to which the following steps were taken:

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<b>DATE</b>	<b>DESCRIPTION</b>
04.05.2009	<i>A Sub-Committee under the Chairmanship of Dr. Manka Tala for the purpose of finalization of T&amp;C and list of items and their specification for open tender of Surgical Consumables was constituted.</i>
19.06.2009	<i>SPC constituted a Committee of Dr. N. Singh and Dr. P.S. Bhandaru to examine the tender documents which was finalized by the above Sub-Committee.</i>
24.06.2009	<i>The above Sub-Committee suggested a few changes and sought approval from the Law and Finance Department.</i>
09.10.2009	<i>The Tender was floated by the CPA and on 09.07.2009 tender for 247 items was opened.</i>
21.10.2009	<i>Technical Evaluation Committee was constituted by the CPA.</i>
27.11.2009	<i>Report of aforesaid Technical Evaluation Committee was placed before the SPC.</i>
02.12.2009	<i>SPC made a Sample Evaluation Committee and this Committee submitted its report on 08.12.2009.</i>
21.12.2009	<i>Financial bids were opened.</i>
12.01.2010	<i>a) SPC decided all single quoted and single</i>

	<i>approved items be retendered; b) to constitute a Sub-Committee to evaluate the rates and assess the reasonability of rates; c) to extande the old tenders for six months.</i>
<i>28.01.2010</i>	<i>Meeting of Sub-Committee decided a) items whose rates had increased upto 50% made be accepted; b) retendering advised for all items whose rates had increased above 150%; c) limit of negotiation set for 50% otherwise retendering for all those items was to be done.</i>
<i>22.03.2010</i>	<i>Meeting of SPC was held and report of Sub-Committee approved 90 items and further decided that negotiated L-1 rates for items showing an increase upto 30% from previous CPA rate may be approved for rate contract and out of 90 items recommended for approval, 59 items were approved for rate contract and 31 items were to be reconsidered by the Sub-Committee.</i>
<i>21.05.2010</i>	<i>Sub-Committee held a meeting and put suggestions before the SPC.</i>
<i>01.06.2010</i>	<i>Meeting of the SPC was held and it decided to write to all departments and hospitals under GNCT of Delhi to provide approved rates. Based on which, the CPA would prepare a comparative statement of rates and the recommendation of Sub-Committee would be placed before SPC in the subsequent meeting. But, the Chairman of the SPC resigned in June, 2010 and no meeting was held thereafter.</i>
<i>13.07.2010</i>	<i>Letters were sent to all Medical Superintendent to provides the approved rates for 31 surgical consumable items for comparison as per direction of SPC.</i>
<i>05.08.2010</i>	<i>Reminders were issued to all hospitals.</i>
<i>12.08.2010</i>	<i>After not receiving of rates from various hospitals, the matter was placed before the Incharge, CPS and DHS.</i>
<i>16.09.2010</i>	<i>DHS approved the rates of 31 surgical consumables as per recommendations of MS's committee.</i>



27.10.2010	<i>DHS gave their approval from supplying of suture material from the two firms namely M/s Centennial Surgical Sutures Ltd. and M/s B. Braun at their own level with directions to make negotiation with the firms to bring the rates of suture material within 50% of previous tender suture rates. But the rates decided by the DHS were not within 50% of previous tender suture rates and decided on much higher rates, even higher than the previous rate and the then marked rates.</i>
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- r. It is in this background that the FIR No. 02/2012 was registered for violating and bypassing the instructions of the Special Purchase Committee (“SPC”) and causing loss to the government exchequer.
- s. The allegation in FIR 2/2012 against the petitioner is that the In-charge of CPA and DHS took a decision at their own level to purchase sutures at a higher rate from M/s Centennial Surgical Sutures Ltd. which should have been done by the Special Purchase Committee (“SPC”) and the SPC in its meeting dated 28.01.2010 rejected the L-1 rates of M/s Centennial Surgical Sutures Ltd. and had decided to issue rate contracts of only those items which were within 50% of the previous approved rates.
- t. The allegations against M/s Centennial Surgical Sutures Ltd. are also as under:-
- On 27.10.2010 (i.e. after the aforementioned decision was taken by the SPC during the meeting dt. 28.01.2010), the concerned officer of CPA and DHS proposed that two sutures supplying firms whose bids were opened against the tender be asked to quote afresh.

- M/s Centennial Surgical Sutures Ltd. supplied sutures to the CPA at Rs. 2201/- whereas they were supplied to hospitals, i.e. GB Pant Hospital at Rs. 996/- and to RML Hospital at Rs. 610/-. Thus, there is a huge difference in the rates of items quoted by M/s Centennial Surgical Sutures Ltd. in response to tenders for various medical use items called by DHS, in the existing CPA rate contract from other three government institutional tender rates. However, during the arguments before the Ld. Special Judge, Tis Hazari Courts, Delhi it transpired that, in the minutes of the meeting on 28.01.2010 it was noted that there is no comparison between the rates offered to individual hospitals and those offered to CPA.
- M/s Centennial Surgical Sutures Ltd. had submitted forged certificates dated 29.10.2009. The Food and Drug Administration, Thane had denied issuing the same.

Allegations in FIR 04/2013 :

- u. While being posted as Medical Superintendent, DDU Hospital, the Petitioner abused his position as public servant for placing order on M/s Colour Life Sciences Pharmaceutical Company for supply of surgical rubber gloves.
- v. An order dated 15.04.2011 for the supply of surgical gloves was placed upon M/s Colour Life Sciences on the basis of an allegedly forged letter, dated 29.03.2011, by which approval was given to M/s Colour Life Sciences for supply of gloves by GTB Hospital.
- w. The rate at which sterile surgical gloves were bought, i.e. at Rs.12.90 per pair was exorbitant, and gloves supplied were less

than what was reflected in the account books.

- x. The FIR further states that the Petitioner violated GFR Rules, which only permit single purchase not exceeding Rs. 25 Lakhs.
  - y. These orders were issued on the basis of the letter dated 29.03.2011, purported to have been issued by Dr. A.K. Chatterjee, Addl. Medical Supdt./Purchase Officer, GTB Hospital, Dilshad Garden, Delhi to Purchase Officer, DDU Hospital, Delhi intimating the approved rates of the gloves. However, Dr. A.K. Chatterjee denied to have issued any such letter and hence, the said letter was alleged to be forged.
4. Ms. Katju, learned counsel for the petitioner, contends the following :
- a. She states that since filing of the contempt petition, four FIRs have been registered in retaliation to CP No.6/12 filed by the Petitioner against the senior officer of GNCT of Delhi. Moreover, out of the four FIRs, two were registered on the same day i.e., 10.01.2012 making similar allegations. She states that all the FIRs emanate from the same tender enquiry no.2/DHS/CPA/2009 relating to the procurement of different medical equipment which simply shows the mala-fide intention of the Respondent in multiplying proceedings against the Petitioner.
  - b. She states that assuming chargesheet has been finalised even then this does not bar this Hon'ble Court from quashing FIR under Section 482, CrPC. She quotes the Supreme Court in **Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59** wherein it was held:

*“16. Thus, from the general conspectus of the various sections*

*under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.”*

- c. She states that the impugned FIRs are an abuse of the process of the court. These FIRs were registered in 2012, more than two years after the alleged offences and 6 months after the complaints were received by the agency. The investigation was not completed in over 10 long years, but has been expedited and concluded after filing of the present writ petitions by the Petitioner. This goes to show the malafide intent of the respondents against the Petitioner.
- d. She states that the delay in the investigation is not attributable to the Petitioner. It is trite law that the Petitioner has a right to speedy investigation and trial under Article 21 of the Constitution.
- e. With respect to FIR No. 1/2012, she states that no role was attributed to the Petitioner. Rather, the co-accused Dr. D.S. Rao (who was the Petitioner's junior officer) was alleged to have cancelled the contract, forfeited the earnest money deposit and intimated all the Directors/Medical Superintendents of the cancellation of the rate contract.
- f. She states there is no allegation whatsoever that any advantage was received by M/s MRK Healthcare, inasmuch as after they cancelled the contract, the gloves were obtained from the open market, i.e. from any supplier. Further, the Earnest Money Deposit of M/s MRK

Healthcare was forfeited.

- g. With respect to allegations in FIR No. 2/2012, she states that that the petitioner had no role to play in the selection of the company, as the same is done by various committees with members who are experts on the subject.
- h. She states that the submitting of forged certificate is attributable to M/s Centennial Surgical Sutures Ltd. and the petitioner had no role to play in that regard. Thus, no offence under Section 420/468/471/120B IPC is alleged to have been committed by the petitioner.
- i. She states that assuming the allegations to be correct, the same do not amount to criminal misconduct under Section 13(1)(d)/ 13(2) of the Prevention of Corruption Act, insofar as the petitioner had no role in the selection of M/s Centennial Surgical Sutures Ltd. as it was done by various committees with members who are experts on the subject.
- j. At best, the offences alleged in the FIR, may amount to negligence or a breach of rules for which the only remedy was a departmental proceeding, but there is no criminality involved. She states the only allegation against the Petitioner is that the Petitioner did not raise the issue before the higher authorities before taking the decision of cancellation of the contract.
- k. With respect to allegations in FIR No. 4/2013, she states that there is nothing on record to support the allegation that the Petitioner knew or had reason to believe that the letter dated 29.03.2011 or 31.08.2011 as alleged were forged documents. Thus, allegations under section 468 IPC are not established.
- l. She states that the allegation under section 471 IPC is not made out

inasmuch as the petitioner had no knowledge or reason to believe that the certificate submitted by M/s Colour Life Sciences were forged. The Petitioner considered the certificates to be genuine and did not make any fraudulent or dishonest use of the same.

- m. She states that FIR no. 04/2013 is stated to be based on information discovered during the course of investigation in FIR No. 01/2012. In accordance with the principle laid down in *Babubhai v. State of Gujarat, (2010) 12 SCC 254*, registering of a fresh FIR in such circumstances is an abuse of the process of law.
- n. She states that no departmental proceedings were ever initiated against the Petitioner, who is however, now receiving a provisional pension. Petitioner's gratuity and leave encashment have not been released to him till date.
- o. The dishonest intention on the part of a public servant while obtaining the valuable thing, is an essential prerequisite for an offence under Section 13(1)(d) PC Act. In the entire FIR, there is no allegation of any demand or acceptance of any bribe or illegal gratification, which is also a prerequisite for 13(1)(d) PC Act.
- p. She placed reliance on the judgment of *Anil Maheshwari & Ors. v. CBI, 2013 SCC OnLine Del 2175* to contend that a public servant has a duty to take decisions on file and every award of a tender or claim, decision to cancel a contract etc. and is bound to cause pecuniary advantage to some and perhaps disadvantage to another. But merely causing pecuniary advantage to someone will not hold the public servant liable for criminal misconduct, unless it is coupled with the use of corrupt or illegal means, abuse of position, or is without public

interest.

- q. She further stated that no offence under Section 420 IPC is made out as the petitioner never deceived any person or induced any person to deliver any property or retain any property, nor consented that a person shall retain any property nor caused any person to do anything or omit to do anything that they would have done if not so deceived.
  - r. She further states that offence under section 120-B IPC is not established since there is no allegation that any of the co-accused persons agreed to do or caused to be done any alleged illegal act or any act which is not illegal by illegal means.
5. *Per contra*, Mr. Kundu, learned counsel for the respondent, argues the following:
- a. He states that assuming there is a delay in investigation, the same is not a ground for quashing the FIR. He places reliance on ***A R Antulay & Ors. v. R.S. Nayak & Anr. [(1992) 1 SCC 225]***, to state that the delay does not automatically cause prejudice to the accused and balance is required to determine whether prejudice has actually been caused to the accused. He further submits that in the present case, the inordinate delay, if any, did not prejudice the rights of the petitioner.
  - b. He states that as per the Apex Court's observation in ***Dhanlaxmi v. R. Prasanna Kumar, AIR 1990 SC 494***, the High Court should not quash proceedings initiated by the magistrate when there are specific allegations in the complaint disclosing ingredients of offence.
  - c. He further states that as per the ratio in ***Jagdish Ram v. State of Rajasthan, AIR 2004 SC 1734***, in considering the question whether criminal proceeding deserve to be quashed on the ground of delay, the

first question to be looked at is the reason for delay as also the seriousness of the offence. The court held that delay by itself is no ground for initiating quashing proceedings.

- d. It is stated that the investigation is complete and the charge sheet has been prepared and is pending before the competent authority for grant of sanction. He further states that this Hon'ble Court can consider the investigation and the material gathered by the investigating agency, forming part of the charge sheet, at the time of adjudicating the present writ petition in view of the Judgment passed in '*Abhishek Gupta & Anr. v. State of NCT of Delhi & Anr.*' [Crl.MC. 1064/2022 decided by Delhi High Court on 16.03.2022], wherein it is held that:

*“If the allegations made in the FIR or complaint or the evidence collected, though remaining uncontroverted, do not disclose the commission of an offence, then the FIR and charge-sheet could be quashed.”*

- e. He submits that in the present case, on a proper conspectus of the material gathered by the investigating agency, no case for quashing of FIRs is made out. There are other accused persons in the charge sheet in addition to the Petitioner; the cause of action is different and in the above-mentioned FIRs, the co-accused are different in each of the FIRs. Therefore, all the FIRs are distinct offences wherein the beneficiaries as well as suppliers are different.
- f. With regards to the allegations in FIR No. 01/2012, he states that it was revealed in the enquiry that after supply of about 57,00,000/- pairs of sterile gloves through its supplier, M/S Pharmatek India during the first year of the rate contract, M/s MRK Healthcare refused



to further supply surgical gloves. On this refusal, I/C CPA and the Petitioner (DHS) maliciously cancelled the contract in haste and intimated all hospitals to make their own arrangements regarding procurement of sterile gloves. Due to this, all hospitals directly placed orders for sterile gloves to M/s MRK Healthcare due to which a loss of Rs. 98,98,391/- was caused to the exchequer and gain to M/s MRK Healthcare.

- g. With regards to the allegations in FIR No. 02/2012, he states that during enquiry it was revealed that the pronouncement of sutures by CPA at higher rates was not finalised by SPC. In fact, it was the In-charge CPA and DHS who took this decision to purchase sutures at higher rates i.e., at Rs. 2201/-. Furthermore, the firm had submitted a forged Manufacture and Marketing Standing Certificate bearing no. Cert./MSC-68/2019-2009/I dated 29.10.2009 at the time of tender which was not issued by Food & Drugs Administration, Thane.
- h. With regards to the allegations in FIR No. 04/2013, he states that investigation has revealed that DDU hospital had issued supply order for Rs. 24,51,000/- and Rs. 46,64,000/- for purchase of sterile surgical gloves in favour of M/s Lord Krishna Company and M/s Colour Life Science respectively. These orders were issued on the basis of the letter dated 29.03.2011, purported to have been issued by Dr. A.K. Chatterjee, Addl. Medical Supdt./Purchase Officer, GTB Hospital, Dilshad Garden, Delhi to Purchase Officer, DDU Hospital, Delhi intimating the approved rates of the gloves @ Rs. 12.90 per pair plus VAT valid upto 31.08.2011. However, during verification, the said letter was found to be forged. The Petitioner was the Medical Supdt.

at DDU Hospital at the time and was found to have violated the mandatory provision of GFR which states that in a single purchase, the amount cannot exceed Rs. 25 lacs but a supply order of Rs. 46,64,000/- was given to M/s Colour Life Sciences which led to filing of FIR No. 04/2013. Thus, the respondent argues that the Petitioner played a key role in the conspiracy to commit offences under PC Act and IPC.

- i. I have heard learned counsel for the parties and have gone through the material documents.
- j. I am of the view that the impugned FIRs in the present case are to be quashed.
- k. At the outset, what weighs with me for quashing of the FIRs is the delay in investigation and filing of charge-sheet. In the present case, allegations in the FIR are of the year of 2012 and 2013. The complaint was made two years after the date of the incident and the FIR was registered 6 months thereafter. The delay in registering FIR is fatal. Moreover, the respondent took more than 10 years to finalise the charge-sheet.
- l. In this matter, arguments were concluded on 07.07.2022 and the judgment was reserved. However, there was some confusion with regards to the filing of the chargesheet as in the written arguments on behalf of the respondent, it has been stated in para no. 8 that chargesheet has been filed but in the subsequent para no.12, it is stated that the chargesheet has been prepared but is now pending before the Competent Authority for grant of sanction. Hence, the matter was put up for clarification on 06.10.2022 wherein, the parties have clarified

that the chargesheet is yet to be filed as it is awaiting sanction.

6. According to Article 21 of the Constitution, the petitioner is entitled to the right to speedy investigation and trial. The Apex court in ***A R Antulay v. R S Nayak (1992) 1 SCC 225*** has identified that “*Right to speedy trial is the right of the accused.*” Reliance is also placed on ***Vakil Prasad Singh v. State of Bihar, (2009) 3 SCC 355*** wherein, it was held:

*“24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.”*

7. The Supreme Court in ***Mahendra Lal Das v. State of Bihar and Others (2002) 1 SCC 149*** held the following:

*“7. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the concerned appropriate authorities are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case.*

*The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending against the incumbent. The appellant has further alleged that he has been deprived of the love, affection and the society of his children who were residing in a foreign country as on account of the pendency of the investigation he could not afford to leave the country.*

*8. This Court in Ramanand Chaudhary v. State of Bihar quashed the investigation against the accused on account of not granting the sanction for more than 13 years. The facts of the present case are almost identical. No useful purpose would be served to put the appellant at trial at this belated stage.”*

8. It is pertinent to note that CBI in the present case, had registered a case bearing No. RC/DAI/2014/A/0036 dated 22.08.2014. The petitioner filed a Writ Petition (Crl.) bearing no. 784 of 2021 titled ‘*Dr Sarbesh Bhattacharjee v. CBI*’ seeking quashing of the said RC. The W.P. (Crl.) 784/21 was dismissed as infructuous vide order 29.07.2021 by this Hon’ble Court as the CBI had filed its status report dated 28.07.2021 before this Court wherein they submitted :

*“3. That although the CBI registered the instant case against Dr. S. Bhattacharjee, the then Director, DHC & Ors., however, the allegations against Dr. S. Bhattacharjee has not substantiated.*

....

*7. That the Petitioner/Applicant Dr. S. Bhattacharjee has not been charge sheeted by the CBI as his involvement in the conspiracy could not be established during the investigation.”*

9. Even though filing of the chargesheet does not preclude this court from entertaining the present writ petitions as held by the Supreme Court in *Anand Kumar Mohatta v. State (NCT of Delhi) (2019) 11 SCC 706*, however, in the present matters, investigation was prolonged for over 10 long years and was immediately concluded after filing of the present writ petitions by the Petitioner.
10. In the present matters, there is abuse of process of law. The impugned FIRs were registered in 2012, more than 2 years after the alleged offences and 6 months after the complaints were received by the agency. Both FIR No. 1/2012 and FIR No. 2/2012 are registered on the same day i.e., 10.01.2012 (though emanating from different complaints). It is pertinent to note that the petitioner was suspended vide order 02.11.2011, just 3 months before his superannuation on 31.01.2012. His suspension was set aside by CAT on 23.12.2011 but the department did not implement the same. Hence, the petitioner filed a Contempt Petition (CP) no. 6/2012 which was dismissed by CAT on 06.01.2012. Interestingly, the petitioner never faced departmental proceedings but was suspended, and is now receiving provisional pension.
11. I find merit in the submission that FIR No. 01/2012, 02/2012 and 04/2013 have been filed as a counterblast to the contempt petition filed by the petitioner.
12. There has been an inordinate delay of more than 10 years in filing the charge-sheet, which is yet not filed for want of sanction. The delay in investigation is not attributable to the petitioner. In my view, the Respondent has not been able to justify the inordinate delay in filing

the charge-sheet and concluding the investigation.

13. The Apex Court in *Pankaj Kumar v. State of Maharashtra (2008) 16 SCC 117* quashed the criminal proceedings on account of “unwarranted prolonged investigations” that caused inordinate delay.

The court held as under:

*“24. Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, the appellant's constitutional right recognised under Article 21 of the Constitution stands violated. It is common ground that the first information report was recorded on 12-5-1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving aforesaid three financial irregularities; the charge-sheet was submitted in court on 22-2-1991. Nothing happened till April 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court.*

*25. Though, it is true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant.*

*26. Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of*

*prolonged investigation by the Anti-Corruption Bureau and the sword of Damocles hanging perilously over his head for over fifteen years must have wrecked his entire career.*

***27. Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear.***

*28. Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the Court of the Special Judge, Latur, deserve to be quashed on this short ground alone.” (emphasis supplied)*

14. From the aforesaid, what can be culled out is that Article 21 recognises the right of speedy trial. The respondent/prosecuting agency must justify the reason for inordinate delay. The delay should not be attributable to the acts of the petitioner.
15. In the present case, there has been an inordinate and unexplained delay in completing the investigation on the part of the prosecution. The Petitioner has always cooperated and joined the investigation whenever called upon.

S.No	FIR No.	Called on	Joined on
1.	FIR no 01/2012	07.05.2012 telephonically	07.05.2012 (arrested)
2.	FIR no 01/2012	17.11.2017	17.11.2017
3.	FIR no 02/2012	05.03.2013	08.03.2013
4.	FIR no 02/2012	13.05.2013	13.05.2013
5.	FIR no 02/2012	23.04.2019	23.4.2019
6.	FIR no 02/2012	11.09.2019	Took time till 25.09.2019
7.	FIR no 02/2012	25.09.2019	25.09.2019
8.	FIR no 02/2012	12.03.2021	Took time for Covid vaccination
9.	FIR no 04/2013	01.06.2013	01.06.2013
10.	FIR no 04/2013	17.06.2013	17.06.2013
11.	FIR no 04/2013	08.01.2014	08.01.2014
12.	RC/DAI/2014/A/ 0036	Letter dt. 15.07.2015 calling to join investigation	07.08.2015

16. Thus, the delay in the investigation is not attributable to the Petitioner. The chargesheet has not been filed even till 06.10.2022 and is awaiting sanction. The sword has been hanging on the head of the petitioner for no fault of his.
17. The recent judgment of the Apex Court titled ***Vijay Rajmohan v. State Criminal Appeal No. 1746 of 2022*** is distinguishable on facts. In the case of ***Vijay Rajmohan (supra)*** the sanction was granted after 1 year and 10 months and the same was considered to be not fatal whereas, in the case on hand, the chargesheet has not been filed over a decade for want of sanction.
18. What weighs with me is not only the fact that the chargesheet is still awaiting sanction before the competent authority but also the inordinate and unexplained delay in conducting the investigation for



10 long years.

19. The incidents mentioned in the FIR are more than a decade old and hence, serious prejudice would be caused to the petitioner if trial is to be conducted on a chargesheet after more than a decade. The petitioner cannot be made to undergo the agony of trial after a decade of filing the FIRs.
20. For the aforesaid reasons, FIR No.01/2012, FIR No.02/2012 and FIR No.04/2013 are hereby quashed on account of delay in investigation and filing of chargesheet.
21. Since I am quashing the FIRs on aforesaid grounds, I do not deem it fit to give findings on the merits or demerits of the allegations in the FIRs.
22. Thus, the writ petitions are allowed.
23. The writ petitions along with applications are disposed of accordingly.

**JASMEET SINGH, J**

**OCTOBER 14<sup>th</sup>, 2022 / (MS)**

[Click here to check corrigendum, if any](#)