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CLIENT ALERT

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Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation- Summary “Your stay has expired”

I. Introduction

In the landmark judgment of *Asian Resurfacing of Road Agency Pvt Ltd v. Central Bureau of Investigation*¹ (“**Asian case**”) a three judge bench of the Apex Court on March 28, 2018 held that where stay of proceedings is granted such stay will be operative only for a period of 6 months from the date of such stay order. However, the stay may be extended in extraordinary circumstances by a speaking order. This ruling is applicable to all proceedings, whether civil or criminal.

II. Facts of the case and issues under contention

In the Asian case, (involving several similar appeals on the same question of law) the trial court had held there was a *prima facie* case against the accused and framed charges. The High Court however stayed the proceedings before the trial court while it adjudicated upon the Criminal Revision Petition/Writ.

In these appeals, the Apex Court inter alia examined the scope of Section 19 (3) (c) of the Prevention of Corruption Act, 1988 (the “**PC Act**”). This provision states no court shall stay proceedings under the PC Act unless there has been any error, omission or irregularity in the sanction granted by an authority leading to failure of justice. Further, the provision also states no court shall exercise powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceeding. Specifically, the Apex Court examined (i) the scope of Section 19 (3) (c) of

the PC Act and the prohibition against granting of a stay order in lieu of the inherent powers given to the High Court under Section 482 of the Code of Criminal Procedure, 1973 (“**CrPC**”) and its dichotomy with Section 19 (3) (c) of the PC Act and (ii) whether an order framing a charge under the PC Act will be categorized as an interlocutory order or whether it can be contested against in revision proceedings before the High Court under Section 397 of the CrPC.

The judgment contained two opinions; one by Justice Goel on behalf of Justice Sinha and himself and the other by Justice Nariman, both opinions were concurring.

III. Findings of the Apex Court

The Apex Court relied heavily on the case of *Madhu Limaye v. The State of Maharashtra*² (the “**Madhu case**”) and concluded in the present matter that, “Order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered.” The Apex Court was of the firm opinion that in appropriate matters the High Court has inherent powers for revision of an order framing a charge and also to grant a stay. However, the Supreme Court wanted to further consider how and when this power would be utilized.

1. Criminal Appeal nos. 1375-1376 of 2013
2. (1977) 4 SCC 551

The intent of the legislature in Section 19 (3) (c) was to expedite trials without any impediment through stay of proceedings. The Apex Court wanted to ensure that the legislative intent is safeguarded. Delay in trials is one of the primary causes of concern and why most citizens refrain from approaching the justice system. Justice Goel opined that stay must not be an incentive to delay and an order granting a stay must reflect application of mind.

The Apex Court also examined the case of *Imtiaz Ahmad v. State of U.P.*³ (“**Imtiaz case**”) in which it was held that it is imperative that the extraordinary power to grant stay is exercised with circumspection and due caution. As per reports examined in the Imtiaz case it was brought to the attention of the Apex Court that 9% of cases have completed more than 2 decades since grant of a stay order and the average pendency per case is usually 7.4 years. In the Asian case, the Apex Court observed, there is an urgent and imminent need to remedy the same. Justice Goel noted that a remedy is needed not merely for corruption cases instead; it is necessary for all civil and criminal cases wherein proceedings are on hold due to a stay order. The Apex Court therefore stated, “*We consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order.*”

The Apex Court set out strict guidelines for a speaking order, “*... a speaking order must be passed showing that the case was of exceptional nature and 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 concluded within two-three months.*”

Additionally, in lieu of this judgment the Apex Court directed the High Courts to issue instructions in furtherance of this ruling such that criminal or civil trials are not pending for an untimely duration.

IV. Analysis and Conclusion

There are converging views in the Apex Court regarding the inherent powers of the High Court under Section 482 of the CrPC and the interpretation of Section 19 (3) (c). In the 2017 case of *Girish Kumar Suneja versus Central Bureau of Investigation*⁴ (“**Suneja case**”) the Apex Court held that in the light of Section 19 (3) (c) of the PC Act revision proceedings against an order of charge are barred and the same cannot be taken up by the court even under Section 482 of the CrPC. This case also held under Section 19 (3) (c) of the PC Act, there is a complete prohibition on grant of stay orders. Being a three judge bench decision, the Suneja case could not be overruled, while a contrary stance has been adopted in the Asian case. Justice Goel, admits that a converging view has been adopted in the Suneja case, however he noted that this does not displace the law as laid down in the Madhu case, as cited above. To ensure, complete clarity a constitutional bench should comment upon the issue of the dichotomy between Section 19 (3) (c) of the PC Act and Section 482 of the CrPC. Moreover, the Asian case was examining specific legal issues, neither of which related to delays brought about by stay orders.

In any event, the Apex Court has passed a judgment that will likely lead to hastening the clearance of the backlog of cases pending in the courts. It has also reminded the courts to act with a sense of responsibility before granting stay order on trial court proceedings. The direction for passing speaking orders for extension of stay in exceptional cases should lead to judicious use of the power to extend a stay. Since there remains an element of discretion in respect of ascertaining matters which are exceptional and which are not, there remains an apprehension that courts will be flooded with applications for extension of stay in all cases pending judicial clarity.

Nonetheless, this judgment was necessary to allow for the speedy disposal of proceedings. There is a vast accumulation of cases pending proceedings before the courts and a decision was required to expedite these trials. However, the practical impact of the Asian case will only be determined upon its actual effective implementation.

3. (2012) 2 SCC 688

4. (2017) 14 SCC 809

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