

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 17905 of 2023

Petitioner :- Prashant Kumar

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Amrendra Pratap Singh, Ashutosh Ganguli, Pranab Kumar Ganguli

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

This writ petition is directed against a First Information Report lodged in Case Crime No.443 of 2023, under Section 13(1)(b) and 13(2) of the Prevention of Corruption Act, P.S.- Shivpur, District-Varanasi, which records that petitioner during his service tenure has amassed wealth disproportionate to his known sources of income. The First Information Report is challenged on the ground that allegation of disproportionate assets was not substantiated in a departmental inquiry conducted by the authorities and since there existed no material in that regard, with the authorities concerned, as such lodgment of F.I.R. is without any basis. Learned counsel for the petitioner places reliance upon a judgment of the Supreme Court in **P.S. Rajya Vs. State of Bihar JT1996 (6) 480**. A passage from the aforesaid judgment has been relied upon in which findings are contained to the fact that allegations had already been examined and findings were returned in favour of the petitioner, in departmental proceedings. It is submitted that facts of the present case are identical and, therefore, the petitioner is entitled to parity on such count. Reliance is also placed upon a judgment of the

Supreme Court in **Deputy Superintendent of Police Vs. Ashoo Surendranath Tewari, Criminal Appeal No.575 of 2020** decided on 08.09.2020, wherein para 38 of the judgment contained following observations:-

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

Though learned counsel for the petitioner has strenuously urged that in the disciplinary inquiry, similar charges have not been found true but despite repeated queries made, learned counsel has not been able to place before the Court any document to show that a disciplinary inquiry was initiated against the petitioner in this regard. Page 123 of the petition is a communication sent by the Additional Director General of Police (personal) which states that though complaint has been received against the petitioner but since inquiry has not been initiated in accordance with the applicable government order, as such open inquiry initiated against the

petitioner was recommended to be dropped. The proceedings apparently were dropped for such reasons. The enquiry was apparently a fact finding enquiry initiated pursuant to some directions issued by the Human Rights Commission and no disciplinary enquiry was conducted.

There is nothing on record to show that any disciplinary inquiry has been conducted, in which the charges levelled against the petitioner of disproportionate assets have not been found proved. In such circumstances, necessary facts for applicability of the judgment in the case of P.S. Rajya are not shown to arise in the present case. In the First Information Report, allegations are that petitioner has possessed assets disproportionate to his known sources of income. Prima-facie allegation with regard to commissioning of cognizable offence having been disclosed in the F.I.R., we decline the prayer made in the writ petition to quash the F.I.R.

The writ petition is **dismissed**.

Order Date :- 1.12.2023//SP/-