

Court No. - 64

Case :- APPLICATION U/S 482 No. - 28875 of 2024

Applicant :- Subhan Ali

Opposite Party :- Union Of India And 2 Others

Counsel for Applicant :- Ashok Kumar, Mahesh Dwivedi, Saroj Kumar Yadav

Counsel for Opposite Party :- A.S.G.I., Sanjay Kumar Yadav

Hon'ble Samit Gopal, J.

1. Heard Sri Saroj Kumar Yadav, learned counsel for the applicant, Sri Gyan Prakash, learned Senior Advocate/Additional Solicitor General, assisted by Sri Sanjay Kumar Yadav, learned counsel for the opposite party no. 1/Union of India and the opposite party no. 3/C.B.I. and perused the records.

2. The present Criminal Misc. Application U/S 482 Cr.P.C. has been filed by the applicant Subhan Ali with the following prayers:-

"It is, therefore, Most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the Special Case No. 08/2020 CBI Vs. Mohan Singh & others along with cognizance and summoning order dated 18.12.2020, arising out of Case Crime RC No.1202017A0002, CNR No. UPGZO-1020758 2020 (Computer Registration No. 393/20) dated 16.01.2017 under section 120B, 420, 468, 471 I.P.C. read with section 13(2) & 13(1)(d) Prevention of Corruption Act, 1988 and section 66 Information Technology Act, 2000 registered at Police Station- Central Bureau of Investigation, Anti Corruption Branch, Ghaziabad, District Ghaziabad, pending before the Court of Special Judge (Prevention of Corruption)(CBI) Court No. 1 Ghaziabad and entire proceedings carried out pursuant thereto, to the extent applicant is concerned.

It is, further prayed that this Hon'ble Court may kindly be pleased to stay the further criminal proceedings of Special Case No. 08/2020 CBI Vs. Mohan Singh & others along with cognizance and summoning order dated 18.12.2020 to the extent applicant is concerned, pending in the Court of Special Judge (Prevention of Corruption) (CBI) Court No. 1 Ghaziabad, otherwise the applicant shall suffer irreparable loss and injury, and/or may pass such other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

3. The First Information Report of the case was lodged on the basis of a complaint dated 13.01.2017 received from R.K. Srivastava on 16.01.2017 with the subject of fraudulent withdrawal of funds from accounts maintained in the Post Office. The accused named therein were are Rajiv Shankar the then Sub-Postmaster, Govindpuri (Modinagare), Ghaziabad, Mohan Singh the then Postal Agent, Head Post Office, District Ghaziabad, Deepak Garg a private person and other unknown persons.

4. The allegations in the First Information Report are that during the year 2015 Ghaziabad Head Post Office was under the process of migration from Sanchay Post Offline software to Finacle online software. Before migration 61 already closed accounts being 49-RD accounts and 12 MIS accounts were reopened at Ghaziabad Head Office on different dates by making fake deposit entries by the Data Entry person. The said accounts were closed at Ghaziabad Head Office and Govindpuri Sub Office on different dates on the basis of fake and forged documents and the money which was transferred in the said accounts, was fraudulently withdrawn from the said closed accounts. Further the facts of the case are not being dilated since the same have at the present moment no purpose and have not been argued and placed.

5. The matter was investigated and a charge sheet no. 09, dated 25.10.2020 was filed by the C.B.I. against 08 persons including the applicant under Sections 120B, r/w 420, 467, 468, 471 I.P.C., Section 13(2) r/w 13(1)(d) Prevention of Corruption Act, 1988 and Section 66 I.T. Act, 2000 and substantive offence, on which the court of Special Judge (C.B.I.), Court No. 1, Ghaziabad vide order dated 18.12.2020 took cognizance and summoned the accused persons. A departmental inquiry against the applicant was also taken up by the Department which concluded vide order dated 22.11.2023 in which the applicant was exonerated from all the charges levelled against him. The operative portion of the same is in paragraph nos. 08 and 09 of the said order which read as under:-

“8. WHEREAS from the case records and discussion made above, it is observed that violation of rules by the Charged Official alleged in the memorandum of charges are either wrong or not applicable. Thus, the allegations levelled against the Charged Official under Article- I & Article-II of charge sheet are held ‘Not Proved’.

9. NOW, THEREFORE, I, Vineet Pandey, Secretary Department of Posts, in exercise of powers conferred under Rule 8(1)(b) of Central Civil Services (Pension) Rules 2021 hereby order to drop the aforesaid memo. of charges dated 20.06.2017 issued against Shri Subhan Ali, Retired APM SB-I, Ghaziabad HO without any prejudice and he be exonerated from all the charges so levelled against him. The gratuity admissible to him may be released, if not required to be withheld in any other case.”

6. The charge in the present matter was framed by the trial court concerned against the accused persons vide its order dated 11.11.2021. Subsequent to which the trial in the matter has started and as of now four prosecution witnesses have been examined. The present Criminal Misc. Application U/S 482 Cr.P.C. has thus been filed before this Court with the above mentioned prayers.

7. Learned counsel for the applicant made a solitary submission that since the applicant has been exonerated in the departmental proceedings initiated against him for the same charges vide the order dated 22.11.2023 the present criminal proceedings deserve to be quashed since the same also relate to identical charges. In support of his argument, learned counsel for the applicant has relied upon the judgement of the Apex Court in the case of **Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI & Another: (2020) 9 SCC 636**, paragraph no. 7, which reads as under:-

“7. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In **P.S. Rajya vs. State of Bihar, (1996) 9 SCC 1**, the question before the Court was posed as follows:-

“3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1) (e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the

Central Vigilance Commission and concurred by the Union Public Service Commission.”

This Court then went on to state:

“17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.”

This being the case, the Court then held:

“23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

In *Radheshyam Kejriwal vs. State of West Bengal and Another*, (2011) 3 SCC 581, this Court held as follows:-

“26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our

opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (AIR p. 27) .

“... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.”

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29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

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31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.”

After referring to various judgments, this Court then culled out the ratio of those decisions in paragraph 38 as follows:-

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.”

It finally concluded:

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

From our point of view, para 38(vii) is important and if the High Court had bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated.”

8. Further he has relied upon the judgement of the Apex Court in the case of *J. Sekar@Sekar Reddy vs. Directorate of Enforcement: (2020) 7 SCC 370*, paragraph no. 17, which reads as under:-

“17. In the said sequel of facts, the legal position emerges by the judgment of Radheshyam Kejriwal (supra) is relevant in which this Court has culled out the ratio of the various other decisions pertaining to the issue involved and has observed as thus:

“12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal Case)

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(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;

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14. From our point of view, para 38(vii) is important and if the High Court has bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated.” In the case of *Ashoo Surendranath Tewari* (supra), this Court relied upon the judgment of *Radheyshyam Kejriwal* (supra) and set-aside the judgment of the High Court while exonerating the appellants because the chance of conviction in a criminal case in the same facts appeared to be bleak.”

9. It is submitted that as such looking to the facts of the case and the judgements of the Apex Court, the present petition be allowed and the proceedings against the applicant be quashed.

10. Per contra, learned counsel for the Union of India/opposite party no. 1 and the C.B.I./opposite party no. 3 vehemently opposed the prayer for quashing and submitted that the applicant is named accused in the present matter. Charge sheet against him has been submitted on which the court concerned has taken cognizance. Subsequent to it charges were framed and the trial in the matter is under progress in which four prosecution witnesses have been examined. It is submitted that in so far as the departmental proceedings are concerned, exoneration of the applicant was on the ground that violation of rules against him in the memorandum of charge were either wrong or not applicable and thus the charge was held not proved. He was thus exonerated of the charges levelled against him. It is submitted that departmental inquiry did not proceed on merits but culminated with the finding that the charges are either wrong or not applicable which cannot be considered as an order on its own merits and by considering the matter in detail. Learned counsel has further submitted that the trial in the matter is under progress since charge has been framed and four prosecution witnesses have been examined and now reverting back to the cognizance and summoning order for its quashing is not permissible. It is submitted that once charge has been framed, the accused cannot be discharged and he can only be acquitted after trial. Learned counsel has placed before the Court the judgement of the Apex Court in the case of *Ratilal Bhanji Mithani Vs. State of Maharashtra and others : (1979) 2 SCC 179* wherein it is has held that after framing of

charge there cannot be a discharge but only an acquittal can be done on a finding of not guilty turning on the merits of the case. It has been held as follows :-

“24. At the outset, let us have a look at the relevant provisions of the Code of Criminal Procedure, 1898, which admittedly governed the pending proceedings in this case. The procedure for trial of warrant cases by Magistrates is given in Chapter XXI of that Code. The present case was instituted on a criminal complaint. Section 252 provides that in such a case, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence, as may be produced, in support of the prosecution. Sub-section (2) of that Section casts a duty on the Magistrate to ascertain the names of persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and to summon all such persons for evidence. Section 253 indicates when and in what circumstances an accused may be discharged: It says:

“253. (1) If, upon taking all the evidence referred to in Section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

Section 254 indicates when and in what circumstances a charge should be framed. It reads:

“254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.”

Section 255 enjoins that the charge shall then be read over and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record that plea, and may convict him thereon.

25. Section 256 provides that if the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state at the next hearing whether he wishes to cross-examine any of the witnesses for the prosecution whose evidence has been taken, and if he says he so wants to cross-examine, the witnesses named by him shall be recalled and he will be allowed to further cross-examine them. “The evidence of any remaining witnesses for the prosecution shall next be taken” and thereafter the accused shall be called upon to enter upon and produce his defence.

26. Section 257 is not material. Section 258(1) provides that if in any case in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal. Sub-section (2) requires, where in any case under this chapter the Magistrate does not proceed in accordance with the provisions of Section 349 or Section 562, he shall, if he finds the accused guilty, pass sentence on him in accordance with law.

27. From the scheme of the provisions noticed above it is clear that in a warrant case instituted otherwise than on a police report, “discharge” or “acquittal” of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of “discharge” and “acquittal” are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded, in the light of the evidence, that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. If a prima facie case is made out the Magistrate must proceed under Section 254 and frame charge against the accused. Section 254 shows that a charge can be framed if after taking evidence or at any previous stage, the Magistrate, thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case.

28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the

trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).

29. Excepting where the prosecution must fail for want of a fundamental defect, such as want of sanction, an order of acquittal must be based upon a “finding of not guilty” turning on the merits of the case and the appreciation of evidence at the conclusion of the trial.

30. If after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, “discharges” the accused, such an acquittal, without trial, even if clothed as “discharge”, will be illegal. This is precisely what has happened in the instant case. Here, the Magistrate, by his order dated December 12, 1962, framed charges against Mithani and two others. Subsequently, when on the disposal of the revision applications by Gokhale, J., the records were received back he arbitrarily deleted those charges and discharged the accused, without examining the “remaining witnesses” of the prosecution which he had in the order of framing charges, said, “will be examined after the charge”.”

(emphasis supplied)

11. Further the learned counsel for the C.B.I. & Union of India has submitted that in so far as exoneration in departmental proceeding is concerned, the same cannot be a ground for quashing of criminal proceedings. It is submitted that a Full Bench of the Apex Court in the case of *State of N.C.T. of Delhi vs. Ajay Kumar Tyagi: (2012) 9 SCC 685*, in paragraph nos. 29 and 30 has held that exoneration in departmental proceeding, *ipso facto*, would not lead to exoneration and acquittal in criminal cases. It was further held that standard of proof in departmental proceeding is lower than that of criminal prosecution. A criminal case has to be decided on the basis of evidence adduced therein. The truthfulness of evidence in the criminal case can be adjudged only after evidence is adduced and the criminal case cannot be rejected on the basis of evidence in the departmental proceeding or on the report of inquiry officer. Paragraph Nos. 29 and 30 have been placed which read as under:-

“29. Decision of this Court in the case of Central Bureau of Investigation v. V.K. Bhutiani, (2009) 10 SCC 674, also throws

light on the question involved. In the said case, the accused against whom the criminal proceeding and the departmental proceeding were going on, was exonerated in the departmental proceeding by the Central Vigilance Commission. The accused challenged his prosecution before the High Court relying on the decision of this Court in the case of P.S. Rajya (supra) and the High Court quashed the prosecution. On a challenge by the Central Bureau of Investigation, the decision was reversed and after relying on the decision in the case of M. Krishna Mohan (supra), this Court came to the conclusion that the quashing of the prosecution was illegal and while doing so observed as follows:

“In our opinion, the reliance of the High Court on the ruling of P.S. Rajya was totally uncalled for as the factual situation in that case was entirely different than the one prevalent here in this case.”

30. Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya (Supra). In fact, there are precedents, to which we have referred to above speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.”

12. It is submitted that looking to the facts of the case and the judgements of the Apex Court, particularly, the judgement in the case of **Ajay Kumar Tyagi (Supra)** of the Full Bench which would prevail, the present petition under Section 482 Cr.P.C. be dismissed.

13. After having heard learned counsels for the parties and perusing the records, it is evident that grounds and arguments as pleaded in the present case are that the applicant is an accused in the present matter and has been exonerated in the departmental proceeding and as such criminal proceedings should be quashed. A perusal of the order passed in the

departmental proceeding goes to show that the same culminated with the finding that the charges were either wrong or not applicable and hence, charge was held to be not proved and thus, he was exonerated from all the charges levelled against him. The exoneration was not an honourable exoneration after full fledged inquiry on merits. Even be that as it may, the exoneration in departmental proceeding cannot be the basis for quashing of criminal case. A criminal case has to be proceeded on the basis of evidence adduced in it. The same has to be tested by the trial court and then a judgement has to be pronounced on the basis of evidence adduced and produced before it. Merely exoneration in departmental proceeding cannot knock-out a criminal case. More so, in the present case after cognizance and summoning, charge has been framed and the trial has started in which four prosecution witnesses have been examined. At this stage terminating the criminal proceeding and the entire trial cannot be justified, in any manner.

14. In view of the same, no ground exists to entertain the matter and as such is **dismissed** accordingly.

(Samit Gopal,J.)

Order Date :- 18.9.2024

Naresh