

Court No. 74

Neutral Citation No. - 2025:AHC:133400 **REPORTABLE**

Judgment Reserved on 15.5.2025

Judgment Delivered on 5.8.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Application U/S 482 No. 40906 of 2022
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Tej Karan Meena

..Applicant

v/s

Union of India And Another

...Opposite Parties

ORDER

HON'BLE SANJAY KUMAR PACHORI, J.

1. Present application under Section 482 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C." has been filed with a prayer to quash the entire proceedings of Criminal Case No. 252 of 2022, arising out of Case Crime No. 17 of 2021, under Section 3/4 of Railway Property (Unlawful Possession) Act, 1966, Police Station R.P.F. Ghaziabad, District Ghaziabad, as well as cognizance/summoning order dated 8.2.2022, pending in the court of Additional Chief Judicial Magistrate, (N.R.), Ghaziabad.

2. Brief facts of the case are that complaint dated 10.10.2021 has been filed and registered as aforesaid case crime, for theft of three old transformer from E.M.U. Car Shade, Ghaziabad, on 9.10.2021. One stolen transformer has been recovered from the shop of co-accused Alimuddin Kabadi and two other old transformers were recovered from the shop of

another co-accused Noor Mohd. Kabadi. As per recovery memo dated 13.10.2021, there is no allegation levelled against the applicant for commission of aforesaid offence. As per pre-summoning evidence, applicant has been implicated as he allowed the accused persons for the purpose of loading of garbage and cleaning grass at the place of occurrence prior to the incident. The applicant was posted as Chief Health Inspector, Northern Railway Zone, EMU Car Shade Ghaziabad and was assigned additional duty for looking after the cleaning and sanitization. There is a contract dated 23.4.2012 of cleaning work of EMU Car Shade Ghaziabad premises with a private contractor which was valid up to 30.9.2021.

3. Learned counsel for the applicant submits that except the confessional statement of the present applicant recorded by the Inspector of Railway Police, there is no other pre-summoning evidence against the applicant. It is further submitted that the applicant was exonerated in the Departmental enquiry dated 07.12.2021, wherein it has been observed and found that the present applicant was not present at the place of incident at the relevant point of time, but he was working in the Administrative Block to prepare details of Covid vaccination work as per the orders of his Superior officer.

4. In support of his submission, learned counsel for the applicant relied upon the following judgments:-

(a) **P.S. Rajya vs. State of Bihar, 1996 9 SCC 1,**

(b) **Jagdish Singh @ Jagdish Kumar Singh vs. State of U.P. and Another, 2024 0 Supreme (All) 1358,**

(c) **Suneeti Toteja vs. State of U.P. and Another, 2025 LawSuit (SC) 276,**

5. Learned counsel for the opposite party no. 2 has not denied the fact that applicant was exonerated in departmental enquiry with regard to same charges. It is further submitted that as per provision of Section 8(1) of Railway Property (Unlawful Possession) Act, 1966, statement of the applicant recorded by the Inspector of Railway Police is admissible in evidence against the applicant. But he admitted that except the aforesaid confessional statement, there is no other pre-summoning evidence against the applicant.

6. In support of his submission, learned counsel for the opposite party no. 2 relied upon the following judgments:-

- (i) **Illias Vs. The Collector of Customs, Madras 1968 0 Supreme (SC) 305;**
- (ii) **Ranjit Singh Vs. State of Madhya Pradesh 1973 0 Supreme (MP) 62;**
- (iii) **Badri Vishal Vs. State of Madhya Pradesh 1969 0 Supreme (MP) 117;**

7. Heard Sri Mithilesh Kumar Shukla, learned counsel for the applicant, Sri Nand Lal, learned counsel for the Union of India and learned A.G.A. for the State and perused the material available on record..

8. After perusal of material available on record, following material facts have been emerged that;

- (i) Theft property has been recovered from the shop of co-accused Islamuddin and Noor Mohd.
- (ii) At the time of incident applicant was present in Administrative Block to prepare details of Covid vaccination work as per the order of his superior officer.
- (iii) As per conclusion of the departmental inquiry, the applicant has been exonerated from the same charge as alleged in the present case.

(iv) Inspector of Railway Police recorded the confessional statement of the applicant with regard to the incident, in which the applicant stated that he was not present during the day hours at the place of incident, but he was present at Administrative Block.

(v) In inquiry which has been initiated against the applicant by department it has been established that the applicant was present at Administrative Block to prepare details of Covid Vaccination work as per orders of his superior officer at relevant point of time and he was not present at the place of incident and due to this reason, the applicant was exonerated in departmental enquiry for same incident.

9. Before considering the argument advanced by both the parties, it is relevant to re-visit of Section 3 which are reproduced as under: Sections 3, 4 and 8(1) of Railway Property (Unlawful Possession) Act, 1966, which are reproduced as under:-

3. Penalty for theft, dishonest misappropriation or unlawful possession of railway property. *Whoever commits theft, or dishonestly misappropriates or is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves that the railway property came into his possession lawfully, be punishable--*

(a) for the first offence, with imprisonment for a term which may extend to five years, or with fine, or with both and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees;

(b) for the second or a subsequent offence, with imprisonment for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgment of the court, such imprisonment shall not be less than two years and such fine shall not be less than two thousand rupees.

Explanation.--For the purposes of this section, "theft" and "dishonest misappropriation" shall have the same meanings as assigned to them respectively in section 378 and section 403 of the Indian Penal Code (45 of 1860).

4. Punishment for abetment, conspiracy or connivance at offences:- *Whoever abets or conspires in the commission of an offence*

punishable under this Act, or any owner or occupier of land or building, or any agent of such owner or occupier in charge of the management of that land or building, who wilfully connives at an offence against the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

Explanation- For the purposes of this section, the words "abet" and "conspire" shall have the same meanings as assigned to them respectively in sections 107 and 120A of the Indian Penal Code.

8. Inquiry how to be made.—*(1) When an officer of the Force receives information about the commission of an offence punishable under this Act, or when any person is arrested] by an officer of the Force for an offence punishable under this Act or is forwarded to him under section 7, he shall proceed to inquire into the charge against such person.*

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer incharge of a police-station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case:

Provided that—

(a) if the officer of the Force is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer of the Force that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer of the Force may direct, to appear, if and when so required before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.

10. In **State of Haryana and others Vs. Bhajan Lal and others** (1992 Supp.(1) SCC 335) the Supreme Court after considering all earlier decisions has given guidelines relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the

inherent powers under Section 482 of Code of Criminal Procedure for quashing an F.I.R. or a complaint, wherein it has been observed as under;

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prime facie constitute any offence or make out a case against the accused.

(2) Where the allegation in the first information report and other materials, if any, accompanying the FIR donot disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the ode except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private an personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an- arbitrary jurisdiction on the court to act according to its whim or caprice."

11. It is settled position of law that if an accused has been exonerated and held innocent in the disciplinary proceedings after the allegations have been found to be unsustainable, then the criminal prosecution premised on the same/ identical set of allegations cannot be permitted to continue. The reasoning for this conclusion/ proposition is that the standard of proceedings in criminal cases is beyond reasonable doubt which is far higher than preponderance of probability, the standard of proof required in disciplinary proceedings. When the same witnesses could not be able to prove/ establish the same/ identical charges in the disciplinary proceeding, there is no purpose in prosecuting the criminal proceedings where the standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in departmental proceedings. [**Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Another**, (2020) 9 SCC 636; **P.S. Rajya vs. State of Bihar**, 1996 9 SCC 1; **Radheshyam Kejriwal Vs. State of West Bengal**, (2011) 3 SCC 581; **J. Sekar Alias Sekar Reddy Vs. Directorate of Enforcement** (2022) 7 SCC 370].

12. In view of the facts and circumstances of the case, the charges levelled against the applicant in the present case as well as departmental inquiry are same and the applicant has been exonerated in departmental inquiry on the basis of same charges and the reliability and genuineness of

the allegations against the applicant has already been tested during the disciplinary proceedings. I am of the considered view that there is no pre-summoning evidence with regard to offence, as alleged against the applicant, hence, this application is liable to be allowed.

13. The present application under Section 482 of Cr.P.C. is **allowed** and the proceedings of Criminal Case No. 252 of 2022, arising out of Case Crime No. 17 of 2021, under Section 3/4 of Railway Property (Unlawful Possession) Act, 1966, Police Station R.P.F. Ghaziabad, District Ghaziabad, as well as cognizance/summoning order dated 8.2.2022, against the applicant Tej Karan Meena, pending in the court of Additional Chief Judicial Magistrate, (N.R.), Ghaziabad are, hereby, quashed.

14. Registrar Compliance is directed to send the copy of the order to the trial Court immediately.

Order Date :- 5.8.2025

A.P. Pandey/ Ishan