



2025:AHC:159272

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 28093 of 2025

A.F.R.

Reserved on : 13.8.2025

Braham Singh

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Rajrshi Gupta, Sudhanshu Kumar
Counsel for Party(s)	:	G.A.

Court No. - 82

HON'BLE SAMEER JAIN, J.

1. Heard Sri Dilip Kumar, learned Senior Counsel assisted by Sri Sudhanshu Kumar, learned counsel for the applicant and Dr. S. B. Maurya, learned AGA-I for the State-respondent.

2. The instant application has been filed by the applicant with a prayer to quash the impugned charge sheet No. 9 of 2023 dated 20.8.2023 as well as the entire proceeding of criminal case No. 52/1652 of 2023-State Vs. Braham Singh (arising out of case crime No. 281/2019, Police Station Kasna, District Gautam Budh Nagar), based on the impugned charge-sheet, presently pending in the Court of Additional District & Sessions Judge/Special Judge, Prevention of Corruption Act, Meerut, under Sections 13(1)(b) r/w 13(2) of Prevention of Corruption Act 1988-Amended Act 2018 and the order dated 10.10.2023, passed by Additional District & Sessions Judge/Special Judge, Prevention of Corruption, Meerut by which the learned Special Judge, has taken the cognizance and issued process against the applicant, to face trial, under section 13(1)b read with 13(2) Prevention of Corruption Act 1988 [Amendment Act 2018].

3. At the very outset, learned counsel for the applicant and learned AGA submitted that in the present matter, there is no need to call counter affidavit as entire relevant materials have already been annexed alongwith the instant application and therefore, instant application may be heard and disposed off, finally.

4. In view of the above, with the consent of parties the instant application is being heard and disposed of without calling counter and rejoinder affidavits.

Brief facts of the case:-

5. FIR of the present case was lodged on 30.3.2019 against the applicant under section 13(1)(e), 13(2) Prevention of Corruption Act and according to the FIR, applicant was posted as Assistant Manager, Grade-II, Greater NOIDA, Development Authority and from his known sources during check period his income was Rs. 43,71,394.00/- but his expenditure during this period was Rs. 10395229.37/- and therefore, his expenditure is disproportionate to his known income and his expenditure was 137.80% higher than his known income.

6. After registration of the FIR investigation was conducted and during investigation Investigating Officer found that Vigilance Inquiry Report on the basis of which FIR was lodged was correct and expenditure of the applicant was in excess of his known source of income during the check period and thereafter he submitted charge sheet against him on 20.8.2023 under section 13(1)(b) r/w 13(1) (2) Prevention of Corruption Act.

7. After submission of charge sheet court concerned took the cognizance and issued summons to the applicant.

8. Hence the instant application.

Submission made on behalf of the applicant:-

9. Learned counsel for the applicant submitted that by way of instant application applicant is challenging the charge sheet filed against him and entire proceeding of the criminal case pending against him solely on the ground that although as per the prosecution expenditure of the applicant was higher than his known source of income during check period but on the basis of the same allegation when departmental inquiry was conducted then in the departmental inquiry he has been exonerated.

10. He further submitted that from the annexure-7 to the affidavit filed in support to the instant application it reflects, when on the basis of the complaint a departmental inquiry was conducted then on 16.5.2018 i.e. well before lodgement of the FIR, applicant has been exonerated. He next submitted that from the inquiry report dated 16.5.2018 it reflects during check period when details of the property of the applicant

were verified through the last five years ITR submitted by him then it was not found that income of the applicant and his expenditure were disproportionate.

11. He further submitted that after above inquiry dated 16.5.2018 a second departmental inquiry was conducted and on 14.10.2019 General Manager/Inquiry Officer again found that on the basis of ITR of the applicant allegations of disproportionate income levelled against him appears to be incorrect.

12. He further submitted that the above inquiry report dated 14.10.2019 was kept pending in the office of the Deputy Secretary Industrial Development, U.P. Lucknow for two years and thereafter show cause notice was issued to the applicant and ultimately on 25.1.2022 departmental disciplinary proceeding pending against him was concluded and final departmental inquiry report dated 25.1.2022 has been annexed as annexure-15 to the affidavit filed in support of the instant application.

13. He further submitted that even from the final inquiry report dated 25.1.2022 it is apparent that the charges of disproportionate income levelled against the applicant were not found correct, however, Additional Chief Secretary awarded penalty of censure punishment.

14. He further submitted that against the penalty of censure punishment applicant filed claim before State Public Service Tribunal, Lucknow and vide order dated 17.5.2023 State Public Service Tribunal, Lucknow allowed his claim petition and even quashed the censure punishment awarded to him. He next submitted that therefore, in departmental inquiry applicant has been fully exonerated.

15. He next submitted that as allegations against the applicant in the instant matter and allegations against him in the departmental inquiry are same and in the departmental inquiry applicant has already been exonerated therefore, continuation of criminal prosecution on the basis of same allegations is nothing but abuse of the process of law.

16. He further submitted that this issue has come before the Apex Court in several cases and Apex Court in these cases also categorically held that if an accused in the departmental inquiry on the basis of same allegations/charges is exonerated then criminal proceeding pending against him on the basis of same allegation/charges cannot be continued.

17. He placed reliance on the following judgements of the Apex Court:-

a. P.S. Rajya Vs. State of Bihar; 1996 (9) SCC 1

b. Radheshyam Kejriwal Vs. State of West Bengal and another; 2011 (3) SCC 581; and

c. Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI & Anr.; 2020(9) SCC 636.

18. He next submitted that therefore, charge sheet filed against the applicant in the instant matter and criminal proceeding pending against him is liable to be quashed.

Submission advanced by State:-

19. Per contra, learned AGA opposed the prayer and submitted that in the present case, as from the investigation conducted by the Investigating Officer, prima facie, it appears applicant is dishonest public servant and his expenditures were very high than his known source of income, therefore, by filing the charge sheet against him Investigating Officer did not commit any illegality.

20. He further submitted that after perusing the material annexed alongwith the charge sheet court concerned also took the cognizance and issued summons to the applicant and therefore, it cannot be said that cognizance and summoning order passed by the court concerned is illegal.

21. He further submitted that criminal proceeding pending against the accused cannot be culminated on the ground that in the departmental proceedings he has been exonerated as standard of proof of both the proceedings are entirely different.

22. He further submitted that departmental/ civil proceedings are based on preponderance of probabilities while standard of proof in criminal charges is beyond reasonable doubt which is solely based upon the evidence adduced by the prosecution and therefore, area of both the proceedings are entirely different and both the proceedings do not overlap each other and therefore, exoneration in any of such proceeding does not *ipso facto* entitles the accused to either exonerate in departmental proceeding or his acquittal in criminal proceeding.

23. He further submitted that law is settled that a criminal prosecution can only be quashed if evidence collected by the investigating officer during investigation does not disclose alleged offences and in the instant case, from perusal of the charge sheet, prima facie, it appears that charge sheet discloses offences under sections 13(1)(b) r/ w 13(2) Prevention of Corruption Act against the applicant and therefore, neither charge sheet nor proceeding pending against the applicant can be quashed.

24. He next submitted that therefore, the instant application filed by the applicant is devoid of merit and it should be dismissed.

Analysis

25. I have heard learned counsel for the parties and perused the record of the case.

26. The sole issue before this Court in the instant application is that if charge sheet and evidence collected by the Investigating Officer during investigation, prima facie, discloses alleged offences against an accused then whether chargesheet filed against him and criminal proceeding pending against him can be quashed on the ground that he has been exonerated in the departmental proceedings on the same set of allegations/charges.

27. The criminal prosecution and departmental proceeding hold two entirely different fields. The departmental proceedings are based on preponderance of probabilities while criminal prosecution is based on evidence produced by the prosecution during trial and standard to prove a criminal charge is proof beyond reasonable doubt and the departmental proceedings relate to conduct of delinquent officer to punish him for his misconduct defined under statutory Rules or Law. Therefore, even if an accused has been exonerated in the department proceeding then also it cannot be said that *ipso facto* his criminal prosecution on the basis of same charges cannot be continued.

28. The Constitution Bench of the Apex Court in the case of ***Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another (2005) 4 Supreme Court Cases 370*** although in different context in para-32 observed as:-

“Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.....”

(Emphasis Supplied)

29. Again three Judges Bench of the Apex Court in case of ***Depot Manager A.P. State Road Transport Corporation Vs. Mhd. Yousuf Miya and others; (1997) 2 SCC 699*** in para-8 held that:-

“ The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence in violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental

enquiry is to maintain discipline in the service and efficiency of public service.....”

30. Again Apex Court in case of ***State Bank of India and others Vs. R.B. Sharma; (2004) 7 SCC 27*** in para-8 observed as:-

“.....When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act 1872 (in short the ‘Evidence Act’). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position.....”

31. The similar issue whether if on same charges, an offender has been exonerated in the departmental inquiry then criminal prosecution pending against him on same charges can be quashed or not has come up before three judges bench of Apex Court in case of ***State (NCT of Delhi) Vs. Ajay Kumar Tyagi (2012) (9) SCC 685*** and after elaborate discussion Apex Court held that *“it is well settled that the standard of proof in a departmental 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 cannot be rejected on the basis of the evidence in the departmental proceeding”*. The Apex Court further observed that ***“we are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result in quashing of the criminal prosecution”***.

(Emphasis Supplied)

32. Learned counsel for the applicant, however, relied upon three judgements of the Apex Court. Firstly, he placed reliance on judgement of Apex Court passed in the case of ***P.S. Rajya (supra)***.

33. From perusal of the judgement of the Apex Court passed in the case of ***P.S. Rajya (supra)*** it reflects that however, Apex Court quashed the proceeding pending against the petitioner and by quashing the same Apex Court also considered the inquiry report but from bare perusal of the judgement of ***P.S. Rajya (supra)***, it reflects that under peculiar facts and circumstances of that case, Supreme Court was pleased to quash the proceedings after considering the judgement of the Apex Court passed in the case of ***State of Haryana and others Vs. Bhajan lal 1992 (Supl) (1) SCC 335***. Therefore, it reflects, facts of the case of ***P.S. Rajya (supra)*** were entirely different from the facts of the present case and Supreme Court quashed the

proceeding after observing that on the peculiar facts of the case the criminal proceeding initiated against the applicant cannot be pursued. Therefore, no benefit can be extended to the applicant in the present case on the basis of judgement of the Apex Court passed in the case of ***P.S. Rajya (supra)***.

34. Second judgement was relied by learned counsel for the applicant is the judgement of Apex Court passed in the case of ***Radheshyam Kejriwal (supra)*** which is three judges bench judgement. After perusing the judgement passed in case of ***Radheshyam Kejriwal (supra)***, it reflects that said case relates to the provisions of Foreign Exchange Regulation Act, 1973 (in short, 'FERA') and in that case prosecution against the appellant was launched under section 56 of FERA and penalty proceeding was initiated under section 51 of FERA and as appellant had already exonerated in the penalty proceeding therefore, Supreme Court quashed the criminal proceeding initiated under section 56 of FERA.

35. From the facts of the case of ***Radheshyam Kejriwal (supra)*** it reflects that the criminal prosecution for offence under section 56 of FERA was connected with the penalty proceeding initiated under section 51 of FERA and as in penalty proceeding appellant has been exonerated, therefore, Supreme Court opined that continuation of the criminal prosecution is not permissible. Therefore, facts of the case of ***Radheshyam Kejriwal (supra)*** were also entirely different from the facts of the present case which is a case of disproportionate income.

36. Learned counsel for the applicant also placed reliance upon the judgment of the Apex Court in the case of ***Ashoo Surendranath Tewari (supra)***. This judgement is also passed by three judges Bench of the Apex Court. In this case also Apex Court on the basis of the report of Chief Vigilance Commissioner quashed the criminal prosecution pending against the petitioner but this case is also distinguishable on facts. It reflects, in the case of ***Ashoo Surendranath Tewari (supra)*** concerned Sanctioning Authority denied the sanction on the ground that there is no evidence to support the prosecution case and considering this fact, Apex Court quashed the criminal prosecution.

37. In case at hand, admittedly, sanctioning authority has already accord sanction against the applicant after perusing the material produced by the investigating agency and therefore, no benefit can be given to the applicant on the basis of the judgement of ***Ashoo Surendranath Tewari (supra)***.

38. Recently the same issue has again come up before the Apex Court in the case of ***Puneet Sabharwal and another Vs. CBI; 2024 SCC OnLine SC 324*** and Apex Court categorically observed that in so far as the submission that where there is exoneration in a civil adjudication criminal proceeding on the same set of facts and

circumstances cannot be allowed to continue is concerned, the same is also without merit as far as the present case is concerned. It is pertinent to note that Apex Court in this case also discussed its earlier judgements passed in ***Radheshyam Kejriwal and Ashoo Surendranath Tewari (supra)*** and distinguished them on facts.

39. The Apex Court in the case of ***Superintendent of Police (CBI) VS. Deepak Chowdhary and others; (1995) 6 SCC 225*** also held that on the basis of exoneration in the departmental proceeding by disciplinary authority criminal prosecution cannot be quashed and further, held that what is necessary and material is whether the facts collected during investigation would constitute the offence or not.

40. Therefore, from the above authorities it is apparent that even if an accused has been exonerated in the departmental proceeding on the basis of same set of charges then also *ipso facto* his criminal prosecution even on same charges cannot be quashed.

41. Further, however, learned counsel for applicant argued only above single point and he did not argue that even from perusal of material collected during investigation no offence is made out against applicant but even from the chargesheet, prima facie, it cannot be said that alleged offences are not made out against applicant.

42. Therefore, from the discussion made above, in view of this Court, the charge-sheet filed against applicant and proceedings of the instant case pending against him can not be quashed.

43. Accordingly, instant application filed by the applicant is devoid of merit and stands **dismissed**.

(Sameer Jain, J.)

September 9, 2025

Ankita