THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.6530 of 2016

ORDER:

The criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.25 of 2009 on the file of the III Additional Special Judge for CBI Cases, registered for the offences punishable under Sections 13(2) r/w.13(1)(e) of Prevention of Corruption Act and under Section 109 IPC.

2. Heard the learned counsel appearing for the petitioners/A.1 & A2 and the learned Special Public Prosecutor, representing the respondent-CBI.

3. Petitioners/A.1 & A.2 are husband and wife. The 1st petitioner/A.1 is an Indian Revenue Service Officer of 1979 Batch. The 1st petitioner/A.1 worked as Deputy Director (Investigations), Hyderabad, Commissioner of Income Tax (Appeals-IV), Hyderabad, Commissioner, ITAT Kolkata. The 1st petitioner/A.1 worked as Additional Commissioner, Income Tax at Hyderabad during the period from 2000 to 2007. On reliable information that the 1st petitioner/A.1 had acquired assets disproportionate to his known sources during the period from 2000 to 2007, the prosecuting agency i.e., Central Bureau of Investigation conducted check for the said period and after following due procedure, prepared statement of assets at the beginning of the check period under Statement-A; statement of assets at the end of the check period under Statement-B; statement of income received during the check period under Statement-C; and the statement of expenditure during the check period under Statement-D, and after deducting 1/3rd expenditure, it is found by

the investigating agency that the petitioners/A.1 & A.2 and their family members acquired movable and immovable properties, calculated at Rs.1,97,46,802-19 against the savings of Rs.75,19,192-93 during the check period. Finally, the investigating agency found that the assets acquired by the 1st petitioner/A.1 are disproportionate to his known sources of income to the tune of Rs.1,22,27,609-26. It is alleged that the 2nd petitioner/A.2 is alleged to have abetted the 1st petitioner/A.1 in the act of acquiring disproportionate assets. Hence the charge.

4. The contention of the petitioners is that the respondent/CBI has erroneously computed the statements A, B, C & D and committed major lapses in computing the income of the petitioners. The respondent/CBI has taken wrong method in computing the income of the 1st petitioner and taken his net salary instead of gross salary. If the income is properly assessed, the petitioners would have surplus income in excess of assets acquired during the check period is Rs.1,07,92,994-93 through known sources of income. The respondent/CBI has erroneously added the income of the 2nd petitioner with the income of the 1st petitioner. The 2nd petitioner has her own sources of income through buying and selling of shares and through the agricultural lands owned by her in her name. The 2nd petitioner during the check period of 2000-2007 has paid income tax on her income and this was confirmed by the respondent/CBI, and through the returns filed by her it is proved that she had independent source of income and was income tax assessee for the past 20 years. The further contention of the 1st petitioner/A.1 is that basing on the same statements and list of witnesses, the Central Board of Direct Taxes (CDT) initiated departmental enquiry against the 1st petitioner/A1 and issued a charge memo framing the same charges as framed in the above calendar

case. The 1st petitioner/A.1 appearing before the Enquiry Officer and presented his case personally and cross examined the witnesses presented by the Presenting Officer, who are none other than the witnesses cited by the respondent/CBI in the above calendar case. The 1st petitioner/A.1 understands that a favourable report would be submitted by the Enquiry Officer to the Central Board of Direct Taxes with a finding that there are no assets disproportionate to his known sources of income. The 2nd petitioner/A.2 has nothing to do with the present case and she is falsely implicated in the above case. Therefore, continuing criminal proceedings against the petitioners is nothing but abuse of process of law.

5. The point for consideration is as to whether continuing the criminal prosecution of the petitioners/A.1 & A.2 would amount to abuse of the process of the court so as to quash the same in order to secure the ends of justice.

6. Under the provisions of Section 482 Cr.P.C a criminal prosecution is liable to be quashed, if as has been laid down by the Apex Court in *State of Haryana v. Bhajan Lal* [1] it falls in any of the seven categories enumerated hereunder:

> (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 prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

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[1] 1992 Supp.(1) SCC 335

3) Where the uncontroverted 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, on investigation is permitted by a police officer without an order of 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 grounds 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 proceedings 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 and personal grudge."

7. The case in hand is under the provisions of the Prevention of Corruption Act and the petitioner/A.1 is alleged to have amassed wealth disproportionate to his known sources of income to the extent of more than Rs.1.22 crores. In the charge sheet, after referring to various instances, the Investigating Agency has summarized its conclusions in para-60 of the charge sheet as under:

"It is submitted that during investigation several witnesses have been examined and several documents have been collected in support of the details mentioned above. Investigation clearly established that A.1 was in possession of assets worth Rs.7,35,090-00 at the beginning of the check period that is 01.01.2000. The accused is in possession of assets worth Rs.2,04,81,892-19 at the end of the check period that is 14.02.2007. The accused/A.1 had an income of Rs.1,37,68,294-96 and had incurred expenditure of Rs.62,49,102-03. Thus it is clearly established that the accused has disproportionate assets to the tune of Rs.1,22,27,609-26 to his known sources of income, for which he could not satisfactorily account for. The computation of the disproportionate assets is as under:

1)	Assets at the beginning of the check period Statement-A	Rs.7,35,090-00
2)	Assets at the end of the check period Statement-B	Rs.2,04,81,892-19
3)	Income received during the check period Statement-C	Rs.1,37,68,294-96
4)	Expenditure during the check period Statement-D	Rs.62,49,102-03

Statement B – Statement A = Assets acquired during the check period

Statement C – Statement D = Likely savings

Disproportionate Assets = Assets acquired during the check period - Likely savings

DA = (B-A) - (C-D)

Calculation = (1,97,46,802-19) – (75,19,192-93) = 1,22,27,609-26

Therefore, the value of the disproportionate assets in the possession of Sri K.Hari Prasad/A-1 is Rs.1,22,27,609-26

DA % = Disproportionate/Income x 100:

1,22,27,609-26 x 100 / 1,37,68,294-96 = 88.80%"

8. The Investigating Agency is relying upon as many as 130 witnesses and 237 documents in support of its allegations. The 1st petitioner/A.1 was working as Additional Commissioner, Income Tax and the 2nd petitioner/A.2 is his wife. Admittedly, the 2nd petitioner/A2 is also an income tax assessee. Though she is house wife, but she had her own independent income. In the calendar case, the learned trial Judge has framed the charge as under:

> "That you A.1 as Commissioner of Income Tax (Appeals-XXXII) Kolkata, West Bengal, during the period from 2000 to 2007, being a Public Servant, have acquired/amassed assets, to the tune of Rs.1,22,27,609-26, disproportionate to your known source of income, which you could not satisfactorily account for, by abusing your official position as Public Servant and obtained pecuniary advantage for yourself and your family members and thereby you have committed an offence punishable under Section 13(2) r/w.13(1)(e) of P.C.Act and within my cognizance."

The calendar case is pending trial since 2009.

9. Firstly, the contention of the 2nd petitioner/A.2 is concerned shall be considered. Admittedly, she is house wife and income tax assessee. The contention of the 2nd petitioner/A.2 is that while computing the income of her husband/A.1, her income has been taken into consideration. It is further submitted that the 2nd petitioner/A.2 being wife of the 1st petitioner/A.1 she cannot be charged with having abetted the 1st petitioner/A.1 punishable under Section 109 IPC.

10. In so far as the first contention that her income has been taken into consideration is concerned, the same do not *prima facie* appears to be correct, for the reason that the statement of the income which is appended to Statement-C to the charge sheet, takes the total income of the 2nd petitioner/A.2 and A.1 as well. *Prima facie* perusal of the record shows that the Investigating Agency has taken into consideration the facts and figures born out from the record that are produced and seized during course of search.

11. The other aspect of the matter is as to whether the 2nd petitioner/A.2 can be said to have committed the offence of abetment punishable under Section 109 IPC read with Section 13(1)(ii) and 13(1)(e)

of Prevention of Corruption Act. There is no quarrel with the legal proposition that even though the 2nd petitioner/A.2 is a non-public servant, she cannot be prosecuted for a substantive offence punishable under the provisions of the Prevention of Corruption Act, but however, she can be prosecuted for the offence punishable under Section 109 IPC, provided it is *prima facie* shown that by her conduct she has persuaded the public servant to do certain acts which contravene the provisions of the Prevention of Corruption Act.

12. The contention of the 2nd petitioner/A.2 for quashing the proceedings against her, cannot be considered at this stage, for the reason that in the trial Court, on behalf of the 2nd petitioner/A.2 Crl.MP.No.249/2010 for discharge was filed and the said petition was dismissed by the trial Court and aggrieved by that, the 2nd petitioner/A.2 has preferred Crl.R.C.No.315/2014 and by judgment dated 21.03.2014 this Court has dismissed the revision case, observing as under:

> "As rightly submitted by the learned Standing Counsel for CBI, the material produced by the prosecution cannot explain properties in the name of the petitioner herein. *Prima facie* case certainly is made out as the CBI alleges that the petitioner connived with her husband and manipulated records. In view of the denial of the defence by the prosecution, I consider that *prima facie* case is made out by the petitioner. The petitioner consequently cannot seek for her discharge pending trial. This criminal revision case consequently is dismissed."

Since this Court has already recorded a finding that there is *prima facie* material to proceed against the 2nd petitioner/A.2, I do not think it is any more open for this Court to invoke its power for quashing the charge sheet under Section 482 Cr.P.C against the 2nd petitioner/A2. No significant changed circumstances are brought out in so far as the 2nd petitioner/A.2 is concerned.

13. In view of the above, I see no substance in the contention of the learned counsel appearing for the 2nd petitioner/A.2 that all further proceedings in so far as the 2nd petitioner/A.2 are liable to be quashed.

14. Adverting to the case against the 1st petitioner/A.1, he is a public servant charged with substantive offence punishable under the provisions of the Prevention of Corruption Act, as noticed above. The contention of the 1st petitioner/A.1 is that there are major lapses in computing his income and reduced his income to show that he has acquired assets disproportionate to his known sources of income. It is further submitted that while calculating the income of the 1st petitioner/A.1, the Investigating Agency taken net salary, and for the purpose of computing the expenditure gross salary has been taken. This method is said to be against the basic principles of accountancy as well as the principles of natural justice. It is further submitted that if the income is properly assessed, the surplus of income of the 1st petitioner/A.1 in excess of the assets acquired during the check period would come to Rs.1.08 crores.

15. The question as to whether the figures that are taken by the Investigating Agency for computing the income and the expenditure has to be deciphered from the documents that are produced. *Prima facie* perusal of the record does not show that there was any gross miscalculation of the income or expenditure of the 1st petitioner/A.1. This aspect is a matter which needs to be enquired into in detail only after full fledged trial and after examining the oral and documentary evidence that would be produced before the trial Court.

16. The main stay of the contention of the 1st petitioner/A.1 is that on the self-same charge, a departmental enquiry was initiated and an Enquiry Officer was appointed. The same oral and documentary evidence as produced before the trial Court was produced before the Enquiry Officer and on considering the entire oral and documentary evidence, the Enquiry Officer has submitted a detailed report on 03.08.2015, exonerating the 1st petitioner/A.1 of the charge. The learned senior counsel appearing for the 1st petitioner/A.1 submitted that since on the same set of oral and documentary evidence the departmental enquiry proved that the 1st petitioner/A.1 does not own or possess assets beyond his known sources of income, continuing the criminal prosecution against the 1st petitioner/A.1 will amount to abusing the process of law and subjecting the 1st petitioner/A.1 to undergo the rigors of trial.

17. There is absolutely no dispute that the above contention of the learned senior counsel appearing for the 1st petitioner/A.1 is born out from the record. On identical charge, the 1st petitioner/A.1 was subjected to the departmental enquiry by the Commissioner for Departmental Enquiries (for short "CDI"). Sri K.P.Saroha was appointed as the Commissioner for Departmental Enquiries and Enquiring Authority. The charge that was framed in the departmental enquiry is similar to the charge in the criminal case. The charge that was framed before the CDI is as under:

> "That the said Sri K.Hari Prasad, presently posted as Commissioner of Income Tax (Appeals)-XXX, Kolkata, while working as a public servant in different capacities in the Income Tax Department during the period 01.01.2000 to 14.02.2007, by abusing his official position and by corrupt and illegal means, acquired immovable and movable assets worth Rs.1,97,46,802-00 in the name of himself and his family members against his likely savings of Rs.75,04,803-

39 during the said period and thus the assets acquired by him are disproportionate to his known sources of income to the extent of Rs.1,22,41,998-61 which he has not been able to explain.

Further, Sri K.Hari Prasad had made investments during the period 01.01.2000 to 14.02.2007 in immovable and movable assets without obtaining prior permission or giving intimation in this regard to his competent authority in violation of the provisions of Rules 18(2) and 18(3) of the CCS (Conduct) Rules, 1964.

By his aforesaid acts, Sri K.Hari Prasad failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

Each and every item that is subject matter of the present criminal case was considered by the CDI. As a matter of fact, there are conclusive findings in the Enquiry Report which show that the properties owned by the 1st petitioner/A.1 are not only well within his known sources of income, but is also having a surplus income of about Rs.1.08 crores, as contended by the 1st petitioner/A.1. Item-wise figures that are determined by the Investigating Officer in the charge sheet and the Enquiring Authority in the departmental enquiry is as under:

Sl. No.	Item	Value adopted by CBI in charge sheet	Page No. of Crl. P	Value adopted by Inquiring Authority	Ref.in Inquiry Report
1.	Assets at the beginning of check period Statement-A	Rs.7,35,090	32	Rs.31,84,044	Page-9, para-7.2.14
2.	Assets at the end of check period Statement-B	Rs.2,04,81,892-19	38	Rs.1,76.79,264-67	Page-13, para-7.2.23

3.	Total income during check period Statement-C	Rs.1,37,68,294-96	43	Rs.3,04,77,935-96	Page-24, para-7.2.49
4.	Total expenditure during check period Statement-D	Rs.62,49,102-03	57	Rs.51,89,720-36	Page-25, para-7.2.54
5.	Assets acquired during check period (B-A)	Rs.1,97,46,802-19	58	Rs.1,44,95,220-67	Page-26
6.	Likely savings during check period (C-D)	Rs.75,19,192-93	58	Rs.2,52,88,215	Page-26
7.	Disproportionate assets (B-A) – (C-D)	Rs.1,22,27,609-26	58	Nil (surplus income of Rs.1,07,92,994-93)	Page-26
8.	**Surplus income after acquiring assets during check period**	**Nil**		**Rs.1,07,92,994-93**	**Page-26**

18. The Enquiring Authority in his report observed as under at Paras-7.2.55, 7.2.56 and 7.2.59:

> "**7.2.55:** Thus, CO has established with facts and figures from the prosecution documents itself which are available on the record of this inquiry that amount computed in Statement-A, B, C & D of charge memo dt.23.06.09 are incorrect and assets acquired by him & his family members as on 14.02.2007 were only from known sources of income and there are no assets disproportionate to his known sources of income. There detailed submissions of CO in the preceding paragraphs of this report are based on evidences – documentary as well as oral and are sufficient to rebut the allegations. **CO's claim that he had surplus income in excess of assets acquired during the check period by**

Rs.1,07,92,994.93 was through known and reported sources only, is well-established.

7.2.56: Though case of disproportionate assets is required to be examined by an appropriate court of Law but since the same has been made by the Disciplinary Authority a subject matter of this inquiry, it is found on the basis of contentions made in the above paragraphs that there are glaring lapses in calculations which was visibly evident in prosecution documents. **While calculating total salary of the Charged Officer, prosecution has relied upon *net salary,* however, for the purpose of deductions, *gross slary* has been taken. This is against the basis principle of accountancy as well as against the principles of natural justice.** There are several other errors in calculations and prosecution has failed to examine its own documents – which are supposedly produced on record of this inquiry for sustaining the allegation.

7.2.59: For the sake of brevity, I cannot quote all such irregularities in calculations/evidences, but it is visibly evident from prosecution documents itself that due care was not taken while calculating CO's income and expenditure during the check period. Thus, on the basis of wrong calculations made in calculating income and expenditure of CO and his family members during the check period, as evident from prosecution documents and elaborated in the preceding paras, **it is established that CO does not have any disproportionate assets to his known sources of income, as allged.**"

19. From the above, there is no dispute in so far as the fact that on the self-same material and identical charges, the Enquiring Authority has exonerated the 1st petitioner/A.1 of the charges leveled against him. However, the point that falls for consideration at this stage is as to whether the prosecution against the petitioner/A.1 notwithstanding his

exoneration on the identical charge in the departmental proceedings could continue or not?

20. The learned senior counsel appearing for the 1st petitioner/A.1 submits that since the entire material, both oral and documentary, has been minutely considered by the Enquiring Authority and found the delinquent charged officer not possessing any disproportionate assets, continuing the criminal prosecution will clearly amount to abuse of process of law. The learned counsel further submits that in a criminal trial it is the burden of the prosecution to prove its case against the accused beyond all reasonable doubt, but whereas in a departmental enquiry, it is only preponderance of probabilities that need to be considered. The learned counsel further submits that when the department could not prove its case against the 1st petitioner/A.1 on the preponderance of probabilities, how the prosecution can prove its case in a criminal case beyond all reasonable doubt. Therefore, the learned senior counsel submits that the further proceedings against the 1st petitioner/A.1 are liable to be quashed. In support of his contention, the learned senior counsel appearing for the 1st petitioner/A.1 relied upon a decision of the Apex Court in *P.S.Rajya v. State of Bihar* [2].

21. The above submission of the learned senior counsel appearing for the 1st petitioner/A.1 is refuted by the learned Special Standing Counsel appearing for CBI *inter alia* contending that merely because a delinquent charged officer has been exonerated in a departmental enquiry that by itself cannot be a ground for quashing the criminal prosecution. It is further contended that the departmental enquiry is conducted by a departmental officer, but whereas a criminal case will be tried by a trained

[2] (1996) 9 SCC 1

Judge. That apart, so long as the departmental enquiry report has finally culminated in acceptance by the Disciplinary Authority, it cannot be said that merely because the Enquiring Authority has submitted its report exonerating the charged officer, the criminal prosecution is liable to be quashed against the charged officer. It is submitted that the report of the CDI in the instant case is under consideration of by the Disciplinary Authority and the same is required to be examined by the Hon'ble Finance Minister, who is Disciplinary Authority in the present matter.

22. The learned Special Standing Counsel for CBI submits that the decision relied upon by the learned counsel appearing for the 1st petitioner/A.1 is of no use for the 1st petitioner/A.1, for the reason that the same is overruled in the subsequent decision of the Larger Bench of the Apex Court in *State of N.C.T of Delhi v. Ajay Kumar Tyagi* [3]. The legal position on this aspect has been clarified with reference to the conflicting judgments of the Apex Court on this aspect in *Kishan Singh through L.Rs v. Gurpal Singh* {2010 (8) SCALE 205} including the decision in *P.S.Rajya v. State of Bihar* (2 supra).

23. The Apex Court in *State of N.C.T of Delhi v. Ajay Kumar Tyagi* (3 supra) has laid down the law on this aspect, very clearly stating that the criminal prosecution is not liable to be quashed merely because the accused has been exonerated of the charges in a departmental enquiry. The legal question that was required to be considered and answered by the Larger Bench was to the effect as to whether the prosecution against the accused notwithstanding his exoneration on the identical charge in the departmental proceedings could continue or not. This question was answered by the Larger Bench at paras-30 and 31 as under:

[3] (2012) 9 SCC 685

> "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 cannot be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.
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> 31. We are, therefore, of the opinion that **the exoneration in the departmental proceeding *ipso facto* would not result into the quashing of the criminal prosecution.** We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further they are not in the same hierarchy."

24. In view of the above authoritative pronouncement of judgment of the Larger Bench of the Apex Court, I have no hesitation to hold that the 1st petitioner/A.1 is not entitled to seek quashing of the criminal prosecution on the ground that he has been exonerated in the departmental enquiry on the same charge. The findings of the I.O. are not final. It is only in the realm of an opinion and will not become final till it is accepted by the Disciplinary Authority at whose instance an enquiry was conducted. The said report is open to be accepted, reversed or modified. Till such time neither of the parties to a Departmental Enquiry can take any advantage out of it.

25. Perusal of the detailed charge sheet which runs into about 50 pages is appended by four schedules as A, B, C & D *prima facie* reveal the

detailed transactions and the known sources of income of both the husband and wife (A.1 and A.2) are taken into consideration and the conclusion is deduced to the effect that A.1 had certain properties which are beyond their known sources of income. Unless the oral and documentary evidence is placed before the Court, the truthfulness or otherwise of the allegations cannot be adjudicated. Without prejudice the contentions of either parties to the criminal trial, it can be said that the material that is placed before the Court is sufficient for proceeding with the trial and it is not a fit case to quash further proceedings in the case.

26. For the reasons stated above, the Criminal Petition is dismissed. Needless to say that the learned trial Court shall dispose of the Calendar Case as expeditiously as possible uninfluenced by any observations made herein.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: .10.2016
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