

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.R.C.No.844 of 2007

ORDER:

This revision case is filed under Sections 397 and 401 of Cr.P.C to revise the order dated 07.11.2000 in CrI.R.P.No.33 of 2000 passed by the III Additional Sessions Judge, Warangal against the order dated 28.04.2000 in CrI.M.P.No.149 of 2000 in C.C.No.751 of 1999 of the I Additional Judicial Magistrate of First Class, Warangal.

2. The respondent herein filed an application before the trial Court under Section 239 Cr.P.C. to discharge him on the ground that G.O.Rt.No.1171, dated 29.05.1999 was passed by the Government holding that the petitioner is not guilty of misconduct for misappropriation of any amount and that no sanction was issued by the competent authority to proceed against him for the offences punishable under Sections 409, 420, 167, 218 and 120(b) IPC.

3. The trial Court upon hearing arguments of both counsel, considering the material on record dismissed the said petition holding that G.O. referred above is not sufficient to discharge the respondent herein while concluding that sanction is not required by applying the principle in **Sambhoo Nath Misra vs State Of U.P. and others**¹.

4. The respondent herein, aggrieved by the order passed by the trial Court, preferred revision before the Sessions Judge and in turn the Sessions Judge based on G.O.Rt.No.1171, dated 29.05.1999 concluded that the respondent herein is liable to be discharged for the offences referred above. Accordingly, ordered revision discharging the respondent herein for the offences referred above setting aside the order dated 28.04.2000 in CrI.M.P.No.149 of 2000 in C.C.No.751 of 1999.

¹ 1997 CrI.L.J 2491 SC

5. The present revision is filed on various grounds mainly contending that G.O. passed by the Government is only to exonerate the respondent herein from proceeding further with any departmental proceedings, the standard of proof is required in a departmental proceedings, which is different from criminal trial. But, the Sessions Judge did not consider the effect of G.O on the pending criminal proceedings against the respondent herein and committed an error in ordering the petition filed under Section 239 Cr.P.C and prayed to set aside the said order passed by the Sessions Judge by restoring the order passed by the Judicial Magistrate of First Class.

6. During hearing, learned Additional Public Prosecutor for the State of Telangana contended that the order passed by the Sessions Judge is erroneous since G.O. has no direct bearing on the issue of criminal misappropriation etc. and therefore, the order passed by the Sessions Judge discharging the respondent herein for the offences referred supra is erroneous and that the Sessions Judge exercised power which is not conferred on it under Section 397 Cr.P.C and therefore, prayed to set aside the order impugned in this revision.

7. Whereas, learned counsel for the respondent contended that the order of the Sessions Judge is in accordance with law and apart from that in view of dismissal of CrI.R.C.M.P.No.3077 of 2006 in CrI.R.C.M.(SR) No.1800 of 2006 in CrI.R.C.(SR) No.13579 of 2004 on 26.06.2012 by this Court, the said order became final and in such a case, the petitioner State cannot proceed further since the petitioner was the respondent in the said CrI.R.C.M.P.3077 of 2006 arising out of the different crime and different incident. Based on the order dated 26.06.2012 of this Court, learned counsel contended that even if delay condonation petition is dismissed, still it is binding on the Courts and

placed reliance in **K.Rachandran v V.N.Rajan and another**² wherein the Apex Court at para 17 held as follows:

“The limitation aspect cannot be such as to be apart or distinct from the merits of the impugned judgment. Therefore, it cannot be said that the appeal was only disposed of on the question of limitation. The result would, after all, be the same i.e. the impugned judgment gaining finality.”

8. On the strength of the principle laid down and taking advantage of the dismissal of the revision filed by the prosecution, it is contended by the learned counsel for the respondent that the petitioner State cannot proceed as the prosecution is groundless and prayed to confirm the order passed by the Sessions Judge.

9. Considering rival contentions and perusing the material available on record, the point that arise for consideration is:

“Whether the prosecution of the respondent is groundless, if so whether the respondent/accused is entitled for discharge under Section 239 Cr.P.C.?”

10. The contention of the respondent before the trial Court and Sessions Court is two fold. The first contention is that in view of G.O. dated 29.05.12999 passed by the Secretary to Government, it concluded that individual is found not guilty or mis-appropriation or of any serious mis-conduct and directed that his salary be disbursed. Taking advantage of the observations in the said G.O. holding respondent not guilty of mis-conduct, the respondent herein sought his discharge for the offences referred above. But, the trial Court did not accept this contention. However, the Sessions Judge based on G.O. discharged the respondent herein for the offences referred above relying on judgment in **Satish Mishra v Delhi Administration and another**³ where the Apex Court held that when the Judge is fairly certain that there is no prospect

² (2009) SCC 569

³ 1996 SCC (CrI) 1104

of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. Most of the Sessions Courts in India are under heavy pressure or workload. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or ship the proceedings at the stage Section 227 of the Code itself.

11. When a petition is filed under Section 239 Cr.P.C. which deals with discharge of accused in trial of warrant cases on police report. In that situation, the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At the stage, the Code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. It is a matter of exercise of judicial mind. There is nothing in the Code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage. Here the 'ground' may be any valid ground including insufficiency of evidence to prove the charge. From the principle laid down in the above judgment, it is clear that the Court considering the material evidence produced along with charge sheet under Section 173 Cr.P.C. concludes that the prosecution is groundless, the Court can discharge the accused after affording reasonable opportunity to both prosecution and accused by exercising power under Section 239 Cr.P.C. The scope of revision under Section 397 Cr.P.C. is limited on the revisional Court i.e. Sessions Judge.

12. The main basis for discharging the accused is only the G.O No.1171, dated 29.05.1995 where the Secretary to the Government observed that the respondent herein is not guilty of serious misconduct or mis-appropriation and directed to disburse salary to the respondent. The standard of proof in departmental proceedings is totally distant from the standard of proof in criminal trial. Merely because, G.O was passed observing that the respondent is not guilty, criminal proceedings cannot be stopped and the accused cannot be discharged. The Apex Court in **Noida Entrepreneurs Association v Noida and others**⁴ came across a similar issue where one Smt Neera Yadav, IAS Officer was charged with serious mis-conduct, and for one reason or other, committee was appointed and thereafter, G.O was passed observing that she is not guilty of such serious mis-conduct. Even in those circumstances, the Supreme Court directed the Courts to proceed with the trial of criminal cases while setting aside G.O. In para 8 of the Judgment, it was held that a bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. (**Tata Cellular v Union of India (AIR 1996 SCC 1)** and **Teri Oat Estates (P.)Ltd. V U.T.Chandigarh and others ((2004) 2 SCC 130)**). The conceptual differences between departmental proceedings and criminal proceedings have been highlighted by the Court in several cases. Reference may be made to **Kendriya Vidyalaya Sangathan and others v T.Srinivas ((2004) III LJ 769 SC)**, **Hindustan Petroleum Corporation Ltd. And others v Sarvesh Berry ((2005) ILLJ 588 SC** and **Uttaranchal Road Transport Corpn. V Mansaram Nainwal ((2006 III LJ 50 SC)**.

⁴ (2007) 10 SCC 395

13. Based on standard of proof between departmental proceedings and criminal proceedings, the Apex Court directed the department to complete the enquiry. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for 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. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. In **Capt.M.Paul Anthony v Bharat Gold Mines Ltd**⁵ the Apex Court formed five guidelines as to how the departmental proceedings should be kept in abeyance during pendency of a criminal case. The Apex Court in **Air Customs Officer IGI v Pramod Kumar Dhamija**⁶ and also in **State of N.C.T. of Delhi V Ajay Kumar Tyagi**⁷, it was held that exoneration in departmental proceeding ipso facto would not result into quashing of criminal prosecution. However, if prosecution against accused solely based on finding in proceeding and that finding set aside by superior authority in hierarchy very foundation goes and prosecution may be quashed. But that principle will not apply in case of departmental proceeding as criminal trial and departmental proceeding held by two different entities. Further they are not in same hierarchy, Order of High Court unsustainable and liable to be set aside.

⁵ (1999) ILLJ 1094 SC

⁶ 2016 (3) SCJ 217

⁷ 2012(3)UC1795

14. It the principle laid down in the above judgments is applied to the present facts of the case, mere withdrawal of departmental proceedings initiated against the delinquent officer is not sufficient to terminate the criminal prosecution on the basis of such G.O. in view of the distinction drawn between departmental proceedings and criminal prosecution at para 9 of the Judgment referred supra and the principle laid down in the other judgment referred supra. Therefore, passing of G.O.Rt.No.1171, dated 29.05.1995 would not exonerate the respondent from his criminal liability. Hence, the discharge of the accused on the ground that the Government passed G.O. is an error apparent on the face of record and the finding recorded by the Sessions Judge is a manifest perversity and not based on any law declared by this Court or by any of the Courts. Therefore, the finding of the Sessions Judge is hereby set aside.

15. The second ground urged before the trial Court and Sessions Judge is that no sanction is given under Section 197 Cr.P.C. In **Sambhoo Nath Misra vs State Of U.P. and others**⁸ the Apex Court turned down such contention and by applying the same principle to the present facts of the case, it is not possible to conclude that any sanction is required at this stage so as to discharge the respondent from the offences referred supra.

16. Learned counsel for the respondent drawn the attention of this Court to an order passed by this Court dated 26.06.2012 in CrI.R.C.M.P.No.3077 of 2006 in CrI.R.C.M.P.(SR) No.1800 of 2006 in CrI.R.C.(SR) No.13579 of 2004, where the Court dismissed the petition for condonation of delay, as prosecution miserably failed to establish that the prosecution was prevented by sufficient cause so as to get the benefit of Section 5 of the Limitation Act. The prosecution in the above case is in different crime and respondent herein is also one of the accused.

⁸ 1997 CrLJ 2491 SC

17. Learned counsel relied on **K.Ramachandran's** case referred supra to contend that when the respondent was acquitted in similar case, which is subject matter of CrI.R.C, which was ended in dismissal while dismissing the application to condone delay. Therefore, it is binding on the Court and that the Apex Court in para 37 of the Judgment held that the limitation aspect can be such as to be apart or distinct from the merits of the impugned judgment. Therefore, it cannot be said that the appeal was only disposed of on the question of limitation. The result would, after all, be the same i.e. the impugned judgment gaining finality. Based on such order, the accused cannot be discharged as the acts of the accused are totally different since found not guilty in the other matter based on the facts of the said case. Therefore, such principle can not be applied to discharge the petitioner for the offences referred supra.

18. As discussed in the earlier paras, the Court having considered the material produced along with the charge sheet under Section 173 Cr.P.C. if found that the prosecution is groundless, then the Court can discharge the petitioner exercising power under Section 239 Cr.P.C., but not otherwise.

19. Here, in this case, the trial Court after elaborate consideration of entire material and law laid down by various Courts dismissed CrI.M.P., but the Sessions Judge based on G.O. discharged the respondent which is contrary to the principle laid down in **Noida Entrepreneurs Association's** and **Capt. M.Paul Anthony's** cases referred supra. Thus, the Sessions Judge exercised its power in excess conferred on it by Section 397 Cr.P.C and committed an error. Therefore, the order passed by the III Additional Sessions Judge, Warangal is hereby set aside directing the I Additional Judicial First Class Magistrate, Warangal to

proceed to frame charge and try the case after following due process of law.

20. In the result, the revision case is allowed setting aside the order dated 07.11.2000 in CrI.R.P.No.33 of 2000 passed by the III Additional Sessions Judge, Warangal and confirming the order dated 28.04.2000 in CrI.M.P.No.149 of 2000 in C.C.No.751 of 1999 of the I Additional Judicial Magistrate of First Class, Warangal.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 02.08.2017
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