

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-34579 of 2013

Date of decision: January 23, 2018

Subhash Chander Goyal

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate and
Mr. Subhash Godara, Advocate for the petitioner.

Mr. Deepak Sabharwal, Addl. AG Haryana
for the respondents.

A.B. CHAUDHARI, J

By the present petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'), the petitioner has sought quashing of FIR No.198 dated 09.06.2011, under Sections 419 420, 467, 468, 471, 120-B of Indian Penal Code, 1860, registered at Police Station Tauru, District Mewat.

FACTS

Respondent No.2-Deputy Commissioner, Mewat at Nuh had lodged FIR in question. It was stated in the complaint that this Court had, in CWP No.2163 of 2011 titled as Maherdin and others versus Smt. Medha and others, had quashed order dated 10.11.2008 passed by the present petitioner acting as Director, Consolidation, Haryana under Section 42 of the East Punjab Holdings (Consolidation

and Prevention of Fragmentation) Act, 1948 (for short 'Act of 1948') and also observed that the order passed by the petitioner was clearly arbitrary, unreasonable and for reasons *dehors* the law and is fanciful, injudicious and irresponsible and Court also observed that the fraud was played on the Gram Panchayat as there was no resolution passed by the Gram Panchayat authorising *Sarpanch* or *Panch* to give statement on behalf of the Gram Panchayat for allowing the exchange of land on the application of Smt. Medha and others. The Gram Panchayat lost the land. The allottee Smt. Medha is niece of the officer, i.e. the present petitioner and the petitioner had not taken into consideration the interest of the residence of the villagers. The order was without jurisdiction and the Court had directed the Deputy Commissioner, Mewat at Nuh to initiate criminal proceedings and it is on that basis, the FIR in question was lodged. The judgment of this High Court in CWP No.2163 of 2011 has attained finality.

The petitioner-Subhash Chander Goyal was served with a charge-sheet under the memorandum dated 15.11.2011 and inquiry officer was appointed vide order dated 22.02.2015 to conduct the domestic enquiry on the charge-sheet made against the petitioner in respect of the same subject matter, namely the FIR that was lodged by respondent No.2 pursuant to the directions issued by this High Court in CWP No.2163 of 2011. The petitioner felt aggrieved by the said charge-sheet and the memorandum and appointment of inquiry officer and filed Original Application No.060/00194/2016 before the Central

Administrative Tribunal, Chandigarh Bench, Chandigarh (for short

'Tribunal'). The Tribunal decided the said Original Application and consequently, quashed the charge-sheet under the memorandum dated 15.11.2011 as well as order dated 22.02.2015 appointing inquiry officer. The said order dated 07.10.2016 passed by the Tribunal has attained finality. The present petition for quashing the FIR has been filed, *inter alia*, on the ground that there is already a decision of the competent Tribunal in the same subject matter.

ARGUMENTS

In support of the petition, learned Senior counsel for the petitioner has submitted that the petitioner in his personal capacity was not a party to the petition, namely CWP No.2163 of 2011, decided on 21.04.2011 by the learned Single Judge of this Court and therefore, any of the adverse observations against the present petitioner even in relation to the direction to initiate criminal proceedings would be in breach of principles of natural justice as admittedly, the petitioner was never heard when the said judgment was made and the direction was issued in Para 27 of the said judgment. Learned Senior counsel then submitted that, though, the said judgment dated 21.04.2011 has become final between the parties to the said petition including Smt. Medha, the same would not affect the interest of the present petitioner. He then submitted that at any rate, the petitioner had the legal authority to act as Director, Consolidation, Haryana and exercising power of State Government under Section 42 of the Act of 1948 vide gazette notification dated 22.04.1983 (Annexure P-2) delegating power to the Director. The petitioner was thus, within his authority to pass the order

that was ultimately quashed by the High Court in the aforesaid CWP, but then the order passed by him was certainly within jurisdiction and could not be condemned as *sans* jurisdiction. Learned Senior counsel then contended that there is no *iota* of evidence anywhere even till this date and even in response to the present petition that Smt. Medha Gupta the allottee is the niece of the petitioner as claimed and the said fact was denied. Even otherwise, she has returned the land and her claim. The findings that Medha Gupta was niece of the petitioner is without any evidence and therefore, merely, for that reason, the petitioner has been put to embarrassment. Learned Senior counsel for the petitioner then submitted that the petitioner was entitled to protection under Section 2 of the Judges Protection Act, 1985 (for short 'Act') as he discharged his function as a judge within the meaning of provisions of the said Act and therefore, the petitioner ought to be protected as he did not act without jurisdiction and had the authority to pass the order. At any rate, according to him, passing of a judicial or quasi judicial order cannot lead to any criminal action against the *quasi-judicial* authority passing the order and the law is settled accordingly. Learned Senior counsel for the petitioner then invited my attention to the judgment made by the Tribunal in the same subject matter as the petitioner was proceeded in a departmental inquiry that was ordered to be held against him. The petitioner had challenged the charge-sheet itself so also the appointment of inquiry officer before the Tribunal and the Tribunal had recorded categorical findings, which have attained finality. Learned Senior counsel has cited some

judgments.

Per contra, learned counsel for the respondents has vehemently opposed the petition. He submitted that the judgment dated 21.04.2011 made by the learned Single Judge of this Court in CWP No.2163 of 2011 was put to challenge in the higher Courts, but without any success. Therefore, the said judgment dated 21.04.2011 has become final and conclusive. Consequently, the direction to initiate criminal proceedings has also been confirmed by the higher Courts. Learned counsel then submitted that there is no bar in lodging the FIR when the criminal offences are disclosed that too under the direction made by this High Court in Para 27 of the judgment dated 21.04.2011. According to him, after all, the law is settled that merely because departmental inquiry was decided in a particular manner, the criminal offences would not get washed away because of the exoneration in the departmental inquiry and therefore, the petitioner has no reason to challenge the FIR in question. Learned counsel has invited my attention to the said judgment dated 21.04.2011 of the learned Single judge of this Court in CWP No.2163 of 2011. I have gone through the same with his assistance. He contended that the petitioner had deliberately and with a criminal intention and with a view to favour his niece Smt. Medha Gupta had passed the order malafidely. Learned State counsel submitted that there is no reason why this Court should invoke the jurisdiction for quashing the FIR in question, which was ordered to be lodged by this Court by issuing directions in Para 27 of the judgment. He cited some judgments.

Learned counsel for the respondents, therefore, prayed for dismissal of the present petition.

CONSIDERATION

Upon hearing learned counsel for the rival parties at length and having gone through the entire record, this Court finds the following admitted facts:-

- (i) The petitioner-Subhash Chander Goyal was not a party to CWP No.2163 of 2011, decided on 21.04.2011 by the learned Single Judge of this Court;
- (ii) The petitioner did have power under Section 42 of the Act of 1948 by virtue of notification dated 22.04.1983 (Annexure P-2) to act as the Director;
- (iii) The petitioner was charged by charge-sheet vide memorandum dated 15.11.2011 and the inquiry officer was appointed on 22.02.2015;
- (iv) The petitioner had put to challenge the said charge-sheet in the departmental inquiry as well as the appointment of inquiry officer by filing Original Application No.060/00194/2016 before the Central Administrative Tribunal;
- (v) The said Original Application was decided in favour of the petitioner vide judgment dated 07.10.2016 by recording specific findings;
- (vi) The said judgment dated 07.10.2016 of the Tribunal has become final and conclusive and was not put to challenge thereafter by anybody including the respondents.

The judgment passed by the Tribunal is the judgment having full sanctity in law and would operate with full force because the subject matter of the FIR and the said judgment of the Tribunal is

the same without even any slightest difference.

Upon perusal of the said judgment of the Tribunal, this Court finds that the following findings recorded by the Tribunal in Paras 14, 15 and 16 in its judgment dated 07.10.2016, will have to be reproduced in the present judgment:-

“14. The applicant has placed on record various orders (Annexure A-4 collectively) passed by other officers as Director, Consolidation/Consolidation officers etc. The said orders are prior as well as subsequent to the order dated 10.11.2008 passed by the applicant. These orders reveal that consistently power under Section 42 of the Act was being exercised by Director, Consolidation by passing similar orders as order dated 10.11.2008 passed by the applicant. Consequently, if the applicant also followed the said precedents and passed similar order, disciplinary action cannot be initiated against him, notwithstanding that the order passed by the applicant has been set aside the Hon'ble High Court. In this context, it is significant to notice that even office of the Director, Consolidation on scrutiny of the application filed by Medha and Bimla did not raise any objection to the maintainability of the said applicant under Section 42 of the Act although Assistant District Attorney/Law Officer was also posted in the office. Consolidation officer also appeared during the hearing before the applicant and did not raise any objection to the maintainability of the application under Section 42 of the Consolidation Act. The applicant remained posted as Director, Consolidation for three months only. Consequently he had to depend on the precedents of the predecessors and also on office briefing. Besides, much more significantly, mere error of law in passing any order,

without anything more, is no ground to initiate disciplinary action against judicial/quasi judicial authority passing the order. In the instant case, the whole basis of the impugned charge-sheet is order dated 10.11.2008 passed by the applicant as quasi judicial authority. Consequently, even if he was not competent to entertain application under Section 42 of the Consolidation Act filed by Medha and Bimla and if the said matter did not fall within his jurisdiction, it was only an error or law on the part of the applicant to pass order on the said application. Merely on the basis of the said error of law, the applicant cannot be charge-sheeted for disciplinary action. In this context, it is significant to notice that in the charge-sheet as extracted hereinabove, there is no allegation of personal gain, ill motive, extraneous consideration, favoritism, malafide etc. against the applicant. The only allegation is regarding the error of law in entertaining the application under Section 42 of the Act. Hon'ble Supreme Court in 1999 (7) SCC 409 Zunjarrao Bhikaji Nagarkar Vs. Union of India held that the authority passing the order in exercise of its quasi judicial function is immune from disciplinary proceedings so far its action is in good faith. In the instant case, it is not even alleged in the charge-sheet that applicant did not act in good faith nor there is any allegation of bias, malafide, favoritism etc. against the applicant. It may be added that disciplinary action can be initiated against a quasi judicial authority if the order passed by it reflects on his reputation for integrity or good faith etc. or shows recklessness or misconduct in the discharge of his duty. Similarly, in 1992(3) SCC 124 Union of India Vs. A.N. Saxena, the Hon'ble Supreme Court held that disciplinary proceedings regarding conduct of an officer discharging

judicial/quasi judicial function should be taken only after great caution and close scrutiny of his actions. Initiation of disciplinary proceedings regarding his judicial or quasi judicial function is likely to shake confidence of public. If such matters are taken lightly, it undermines his independence. However, at the same time, it cannot be said that such action cannot be taken at all. Where the action of the officer indicates his desire to oblige himself or unduly favour to any part or improper motive, disciplinary action should be taken. In the instant case, there is not even an allegation against the applicant in the impugned charge-sheet regarding any undue favour/illegal motive etc. of the applicant. In 2005(2) P.L.R. 225 Smt. Gayatri Jain Vs State of Punjab, Hon'ble High Court even quashed FIR lodged on the basis of order passed by quasi-judicial authority. The said case also related to order passed by Additional Director, Consolidation in exercise of power under Section 42 of the Consolidation Act. Similarly, in 2013 (1) Law Herald 154 Vivek Padam Singh Vs. State of Haryana, Hon'ble High Court quashed FIR lodged on the basis of orders passed by Assistant Collector Ist Grade exercising the power of Collector as quasi judicial authority. No judgment to the contrary has been cited. From the aforesaid judgments, it is evident that disciplinary action cannot be initiated against quasi judicial authority merely on the basis of error of law in passing of any order, unless there is something more to it e.g. favoritism, malafide, illegal motive etc. In the instant case, there is not even an allegation in the impugned charge-sheet against the applicant regarding favoritism, malafide etc. The only allegation is that he was not competent to pass order dated 10.11.2008 while exercising power under Section 42

of the Consolidation Act. However, mere error of law on the part of the applicant in entertaining the application under Section 42 of the Consolidation Act and passing order dated 10.11.2008 cannot be made basis of initiating disciplinary action against him as the said order was passed by him as quasi-judicial authority and except allegation of error of law on the part of the applicant, there is no allegation of bad faith, malafide, illegal motive, corruption etc. On the other hand, good faith of the applicant in passing the said order is reflected by the fact that similar orders have been passed by other officers exercising similar powers prior as well as subsequent to the order passed by the applicant. Besides it, the office including law officer and Consolidation officer present during the hearing also did not point out that the said application under Section 42 of the Consolidation Act was not maintainable before the applicant as Director, Consolidation. The applicant has even issued notice to Gram Panchayat and pursuant thereto, Sarpanch and Panch of the Gram Panchayat appeared before the applicant and made statement for consolidating the land of both parties i.e. for passing order dated 10.11.2008. The said order has also proved beneficial to Gram Panchayat as per un-rebutted averment of the applicant.

15. Plea of learned counsel for the respondents that charge-sheet has been issued on the basis of adverse observations against the applicant in judgment dated 21.04.2011 by the Hon'ble High Court cannot be accepted because the applicant in his individual capacity was not even party to the Writ Petition in which judgment dated 21.04.2011 was passed by the Hon'ble High Court. Moreover, as per impugned charge-sheet and statement of imputations of misconduct, the same are not based on

judgment of Hon'ble High Court. There is not even a remote reference to the judgment of Hon'ble High Court either in statement of imputations of misconduct or in the Article of charge. Merely because error of law committed by the applicant in passing order dated 10.11.2008 has been rectified by the Hon'ble High Court by quashing the said order vide judgment dated 21.04.2011 is no ground to initiate disciplinary action against the applicant who passed the said order as quasi judicial authority.

16. For the reasons aforesaid the instant O.A. is allowed. Charge-sheet issued to the applicant vide Memorandum dated 15.11.2011 (Annexure A-1) and order dated 20.02.2015 (Annexure A-2) thereby appointing Respondent No.2 as Inquiry Officer are quashed along with consequent inquiry proceedings.”

Perusal of the said judgment of the Tribunal clearly shows that the Tribunal has recorded categorical findings on facts and in law which are based on judgments of the Supreme Court that the petitioner having acted with full authority as *quasi judicial* authority cannot be prosecuted in a departmental inquiry. It has also held that even assuming there was error in law on facts on the part of the petitioner while passing the *quasi judicial* order for which he was duly authorised under law, the question of holding departmental inquiry for the same would not arise. In so far as the judgment of the learned Single Judge is concerned, the same has been duly considered by the Tribunal in Para 15 of the judgment above. Thus, the Tribunal which is competent judicial Court has categorically dealt with the same subject matter of the FIR and consequently, quashed the charge-sheet as well

as order appointing inquiry officer. The said judgment of the Tribunal having become final cannot be ignored and would be relevant for quashing the FIR.

I have gone through the decision of the Apex Court cited by learned State counsel in the case of **State through SPE & CBI, AP versus M. Krishna Mohan and another**, 2007 (4) R.C.R. (Criminal) 882, in which Apex Court has held thus, in Para 33:

“33. In a case of this nature where departmental proceeding was initiated only as against respondent No.2, the enquiry officer did not have the benefit to consider all the materials which could be brought on record by the Department in the light of the investigation made by a specialized investigating agency, the evidence of experts and deposition of witnesses to show that forgery of document has been committed by forging thumb impression and handwriting, we are of the opinion that exoneration of respondent No.2 in the departmental proceedings cannot lead to the conclusion that he was not guilty of commission of the offences wherefor he was charged.”

In the case of **Kamal Kishore Prasad versus State of Bihar through CBI**, 2012 (7) R.C.R. (Criminal) 1168, the learned Single Judge of Patna High Court has stated thus, in Para 15:-

“15. In view of ratio laid down by the Hon'ble Apex court in cases noticed above, I find no merit in the submissions of petitioner that a delinquent exonerated in departmental proceeding would be ipso facto entitled to acquittal in criminal prosecution on that basis alone, and the same is accordingly rejected. Issue no.1 is thus decided against

petitioner.”

In the case of **Susanta Kumar Dey and others versus Union of India and others**, 2010 (5) R.C.R. (Criminal) 173, the Division Bench of Calcutta High Court has also held that exoneration in departmental proceedings would not *ipso facto* lead to a judgment of acquittal in criminal trial.

In the case of **State of Bihar versus Dhirendra Prasad Shrivastava**, 2015 (1) R.C.R. (Criminal) 445, the Apex Court in Para 11 has held that the exoneration in the departmental proceedings *ipso facto* would not result in quashing of the criminal prosecution.

Learned Senior counsel for the petitioner relied on the decision of Apex Court in the case of **P.S. Rajya versus State of Bihar**, (1996) 9 SCC 1. However, in view of Paragraph 11 of the judgment of the Apex Court in State of Bihar versus Dhirendra Prasad Shrivastava's case (*supra*), the decision in P.S. Rajya's case (*supra*) would not be in any help of the petitioner. I quote following from Para 11 of judgment of the Apex Court in State of Bihar versus Dhirendra Prasad Shrivastava's case (*supra*):-

“11. The third principal ground on which the High Court thought it proper to grant relief to the respondents accused is that in a departmental proceeding instituted against the respondents on the same charges, the respondents were exonerated. Relying on a decision of this Court in P.S. Rajya v. State of Bihar, [1996(3) R.C.R. (Criminal) 261: (1996) 9 SCC 1], the High Court construed the ratio of the aforesaid decision to mean that

*in a situation where a departmental proceeding against an accused is launched and the accused is exonerated therein, the criminal proceeding on the same charges must necessarily fail and, therefore, should be interdicted. While relying on P.S. Rajya's case supra, the High Court failed to notice a subsequent decision of this Court in **State v. M. Krishna Mohan, [2007(4) R.C.R. (Criminal) 882 : 2007(6) Recent Apex Judgments (R.A.J.) 96 : (2007) 14 SCC 667]**, where this Court had taken the view that exoneration in a departmental proceeding, ipso facto, would not lead to the acquittal of the accused in the criminal trial. Even otherwise, in a three judge Bench decision of this Court in **State (NCT of Delhi) v. Ajay Kumar Tyagi, [2012(4) R.C.R. (Criminal) 297 : 2012(4) Recent Apex Judgments (R.A.J.) 415 : (2012) 9 SCC 685]**, it has been explained that the decision in P.S. Rajya (supra) must be understood to have been rendered in the facts of the case.....”*

The decisions cited by the learned counsel for the respondents lay down the preposition of law that the exoneration in the departmental inquiry of the same subject matter would not automatically lead to acquittal in a criminal trial or even quashing of the criminal proceedings. There can be no quarrel over the said preposition. However, in the present case, what is significant is that in the same subject matter and the same facts on the basis of which FIR in question has been lodged, there is a judgment of a competent Tribunal with categorical findings that the petitioner did no wrong and had the authority to make order as quoted above by me in respect of the same subject matter. Not only that, by quoting the decisions of

Apex Court in the cases of **Zunjarrao Bhikaji Nagarkar vs. UOI and others** (1999) 7 SCC 409 and **Union of India vs. A.N. Saxena**, (1992) 3 SCC 124 and Punjab and Haryana High Court's Judgments in the cases of **Gayatri Jain versus State of Punjab**, (2005) 2 RCR (Cri) 535 and **Vivek Padam Singh versus State of Haryana and others**, 2008 SCC OnLine P&H 1685, that the *quasi-judicial* authority is immune from disciplinary proceedings. The said judgment of the Tribunal has become final and conclusive as it was not challenged before the higher Courts. The sanctity attached to a judgment of a Court (C.A.T.) cannot be compared with the institution of or exoneration of delinquent in departmental proceedings. Thus, when the Tribunal has clearly adjudicated about the insulation/protection to the petitioner in terms of various decisions by the Supreme Court quoted in the said judgment of the Tribunal, the petitioner having acted as quasi judicial officer having power under Section 42 of the Act of 1948, cannot be allowed to be prosecuted in the manner that has been done. Neither the police nor the criminal Court can be allowed to sit over the findings recorded by the Tribunal as aforesaid in the same subject matter and adjudicate about the same over and again. There is, therefore, a marked distinction of exoneration of a person in departmental inquiry and the judgment of a competent Tribunal which is headed by a former Judge of the High Court. Allowing the police to investigate and the criminal Court to adjudicate in such a fact situation is not at all warranted as it would shake the public confidence. It is

also significant to note that there is no semblance of even minimal evidence except a bald statement that Mrs. Medha Gupta is niece of the petitioner or his relative, nor there is any evidence of *mala-fides*. Then the land is also said to have been returned by Mrs. Medha Gupta.

The upshot of the above discussion is that the present petition must succeed. In the result, I make the following order:-

ORDER

- (i) CRM-M-34579 of 2013 is allowed;
- (ii) Rule is made absolute in terms of prayer which reads thus:-

“It is, therefore, respectfully prayed that the present petition may kindly be accepted and FIR No.198 dated 09.06.2011 under Sections 409, 420, 467, 468, 471, 120-B IPC registered at Police Station Tauru, District Mewat, may kindly be quashed, in the interest of justice, qua the petitioner.”

(A.B. CHAUDHARI)
JUDGE

January 23, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**