

\$~20 to 22

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 23rd July, 2018

+ CRL.M.C. 1250/2016 and Crl. M.A. 5359/2016, 5361/2016,
10361/2016, 8606/2018, 8607/2018

GURU NARAYAN MISHRA Petitioner

Through: Mr. Babu Lal, Mr. Lokesh Kumar
and Mr. Harish Nigam, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION
& ORS Respondents

Through: Mr. Narender Mann, Spl. PP for
CGI with Mr. Manoj Pant, Advocate

Mr. Ajay Digpaul, CGSC and Ms. Madhuri
Dhingra, Advocates for R-2 & 3

+ CRL.M.C. 2209/2016 and Crl. M.A. 9298/2016 and
10366/2016

GURU NARAYAN MISHRA Petitioner

Through: Mr. Babu Lal, Mr. Lokesh Kumar
and Mr. Harish Nigam, Advocates

versus

CBI Respondent

Through: Mr. Narender Mann, Spl. PP for
CGI with Mr. Manoj Pant, Advocate

+ CRL.M.C. 1390/2017 and Crl. M.A. 5672/2017

GURU NARAYAN MISHRA Petitioner

Through: Mr. Babu Lal, Mr. Lokesh Kumar
and Mr. Harish Nigam, Advocates

versus

CBI

..... Respondent

Through: Mr. Narender Mann, Spl. PP for
CGI with Mr. Manoj Pant, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These three petitions have been filed by the same public servant in relation to different orders of the Special Judge passed in the context of the criminal case (CC 01/15) arising out of the First Information Report (RC No.55A/89/CBI/ACB/New Delhi) involving offences punishable under Sections 120B Indian Penal Code, 1860 (IPC), Sections 7 and 13 of Prevention of Corruption act, 1988, the prayer being for this court to intervene and quash the said proceedings and the said impugned orders passed therein, in exercise of the inherent power of this court under Section 482 of the Code of Criminal Procedure, 1973.

2. The FIR of the Central Bureau of Investigation (CBI) was registered on 20.11.1989. It was based on the complaint of one Satish Chand Gupta, a civil contractor. The petitioner was working in the concerned department of the government as Junior Engineer at the relevant point of time, one K.S. Warriach, being the Assistant Engineer. It was alleged that in the context of certain work order that had been awarded to the said contractor, illegal gratification was demanded both by the petitioner and the said Assistant Engineer for

finalization of the second bill. It is further shown by the record of investigation that the CBI arranged a trap in the course of which both the petitioner and the said other public servant were apprehended, evidence confirming demand and acceptance of bribe having been gathered. The CBI, however, submitted a closure report (dated 25.11.2005) on 26.11.2005 pointing out certain discrepancies. The said closure report was rejected by the Special Judge by her order dated 09.03.2006 whereupon the CBI stood directed to conduct further investigation. Nine years thereafter, CBI submitted a second closure report (01/15) which was considered in the light of evidence that had been gathered. By the order dated 07.08.2015, the Special Judge rejected the closure request observing, *inter alia*, that the said second report was verbatim the same as had been filed earlier in 2005, expressing opinion to the effect that there were grounds to proceed against the petitioner in as much as there was evidence to show that he had accepted the money that had been offered during the trap, it having been recovered statedly at his instance from his office table drawer. The Special Judge, however, was unable to proceed further since the CBI had not taken any steps for sanction for prosecution to be obtained in terms of Section 19 of the Prevention of Corruption Act, 1988.

3. By the aforesaid order dated 07.08.2015 which is assailed in the first captioned petition, the Special Judge directed the CBI to place the evidence gathered during investigation before the sanctioning

authority to consider as to whether sanction for prosecution was to be granted.

4. The sanctioning authority i.e. the Director General, Central Public Works Department (CPWD), by his order dated 02.02.2016, accorded sanction for prosecution of the petitioner under Section 19 of the Prevention of Corruption Act, 1988, which is also assailed in the second captioned petition and, on that basis, CBI filed a charge-sheet seeking prosecution of the petitioner on 22.03.2016 on which the Special Judge took cognizance and issued process against the petitioner for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The validity of the order for sanction for prosecution and the order whereby summons were issued to the petitioner are challenged by the second captioned petition.

5. The petitioner having been summoned as accused moved an application before the Special Judge seeking dropping of proceedings on the ground that in the disciplinary proceedings, also initiated against him, he had already been exonerated, his submission being that upon exoneration, the criminal action in the court of the Special Judge was unwarranted and in the nature of abuse of process of the court. He placed reliance on the rulings in *P.S. Rajya Vs. State of Bihar*, (1996) 9 SCC 1; *Radheshyam Kejriwal Vs. State of West Bengal and Anr.*, (2011) 3 SCC 581; *Lokesh Kumar Jain Vs. State of Rajasthan*, (2013) 11 SCC 130. The Special Judge, however, rejected the prayer, by order dated 14.03.2017, basing his decision on the ruling of the

Supreme Court in *State (NCT of Delhi) Vs. Ajay Kumar Tyagi*, (2012) 9 SCC 685. The said order is challenged by the third captioned petition.

6. At the hearing on these petitions, the learned counsel for the petitioner raised only one plea viz. that in the face of exoneration in the disciplinary action, the proceedings in the criminal case arising out of FIR under the Prevention of Corruption Act, 1988 in the court of the Special Judge cannot survive. It is the argument of the learned counsel that the facts on the basis of which disciplinary action was initiated, it having ended in exoneration, are same as the facts on the basis of which the present proceedings have been initiated in the court of the Special Judge. He also places reliance on *Videocon Industries Ltd. and Anr. Vs. State of Maharashtra and Ors.*, (2016) 12 SCC 315 whereby the view taken by a bench of three Hon'ble Judges in *Radheshyam Kejriwal* (supra) was endorsed.

7. In *Ajay Kumar Tyagi* (supra), a bench of three Hon'ble Judges of Supreme Court has ruled thus :

24. Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya case. In fact, there are precedents, to which we have referred to above, that 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 can not be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.

25. 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.

(emphasis supplied)

8. In the considered opinion of this court, the view taken by the Special Judge at this stage of the process is correct. As was pointed out by the learned counsel representing CBI, as is also taken note of by the sanctioning authority in the order granting sanction, that the exoneration in the departmental proceedings vide order dated 22.11.1995 by the Director General, CPWD was essentially based on the then decision of the CBI (investigating agency) not to file charge-sheet against the petitioner in the criminal court. It was a decision influenced by the opinion indicated by the investigating agency. There is nothing brought before this court in these proceedings to show that the evidence led during the disciplinary inquiry was same as

the one presented before the criminal court on which dis-satisfaction with the closure reports was recorded twice. In these circumstances, mere dropping of the disciplinary action cannot automatically result in dropping of the criminal action in the court of the Special Judge.

9. The opinion of the Special Judge that sufficient grounds exist to proceed against the petitioner will have to prevail. It will, however, be open to the petitioner to raise all defences as are available to him in law at the time of consideration of the charge and further, if charge is framed, during the trial.

10. There is no occasion at this stage for this court to intervene. The petitions and the applications filed therewith are, thus, dismissed.

R.K.GAUBA, J.

JULY 23, 2018

yg

न्यायमेव जयते