

\$~9&10 (*common order*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd November, 2018

+ CRL.M.C. 3258/2016 and Crl.M.A.13911/2016

+ CRL.M.C. 3298/2016 and Crl.M.A.14031/2016

JAI PRAKASH SINGH

..... Petitioner

Through: Mr. Ajit Rajput, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP
for the State

Mr. Pramod Tiwari, Adv. for
R2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner claims to have been appointed in 1984, on the basis of a selection process of Union Public Service Commission (UPSC) to the post of Assistant Engineer (AE) in erstwhile Delhi Electricity Supply Undertaking (DESU), at times when it was statedly a department of Municipal Corporation of Delhi (MCD). Subsequently, DESU was re-established as an entity under the Govt. of NCT of Delhi and restyled as Delhi Vidyut Board (DVB) in 1997 and the petitioner continued to serve in said department. Pursuant to enactment of Delhi Electricity Reforms Act, 2000, notified on 06.03.2001, five power distribution companies having been

established by the government, the services of the petitioner were statedly transferred to one of them, named, Central East Delhi Electricity Supply Company Limited, such transfer of services being subject-matter of a tripartite agreement. The power distribution companies were also re-structured over the period and concededly services of the petitioner were placed at the disposal of the BSES Yamuna Power Company Limited.

2. During the relevant period, the petitioner was working as Deputy General Manager (DGM) in BSES, wherein the second respondent had been employed (on 01.03.2005) as circle coordinator, the duties entrusted to him being to supervise the replacement of electric meters as against mechanical meters, through electricians engaged by private contractors. On 18.03.2008, the petitioner lodged complaint with Deputy Commissioner of Police (DCP) of North-East Delhi District about certain acts of commission or omission on the part of the second respondent, this becoming subject-matter of a criminal case (FIR), which statedly was decided by the court of Additional Sessions Judge (special court under Electricity Act) on 21.07.2010, discharging the second respondent from the accusations of offences under Section 136 of Electricity Act, 2003 and Section 408 of Indian Penal Code, 1860 (IPC).

3. The second respondent presented a criminal complaint dated 10.02.2011 in the court of Additional Chief Metropolitan Magistrate (ACMM) seeking prosecution of the petitioner for the offence under Section 500 IPC, primarily on the submission that, by lodging a false

complaint, it being with *mala fide* intention, the petitioner had caused great harassment and financial loss to him, such acts having “ruined” his reputation in the society.

4. The metropolitan magistrate, after inquiry, found *prima facie* case to be made out and, thus, by her order dated 10.08.2011 issued summons to the petitioner calling him up to be answerable on the accusations for offence under Section 500 IPC. The said criminal complaint case (later registered as CC No.1175/1/2012) is pending on the file of the metropolitan magistrate.

5. After appearing before the court of metropolitan magistrate, the petitioner made an application seeking discharge on the ground, that his prosecution was impermissible in absence of sanction under Section 197 of the Code of Criminal Procedure, 1973 (Cr.P.C.), he being a “*public servant*” entitled to the protection of law, the acts of commission or omission attributed to him having been undertaken in discharge of his official duties. The application was dismissed by the metropolitan magistrate, by order dated 05.08.2013, rejecting the contention, on the basis of oral submission, that the petitioner (accused) could be treated as a public servant and entitled to the protection of section 197 Cr.P.C. and in this context reliance was placed primarily on a decision of a learned single judge of this court in *Ashok Kumar Raswant vs. CBI, Crl. Revision Petition No.495/2005, decided on 06.02.2009*.

6. The petitioner challenged the aforesaid order in the court of sessions by criminal revision petition no.39/2014 which was dismissed

by the said court, by its order dated 20.03.2014, affirming the view taken by the magistrate. The said orders dated 05.08.2013 of the metropolitan magistrate and dated 20.03.2014 of the revisional court are assailed by CrI.M.C.3258/2016, presented under Section 482 Cr.P.C.

7. Later, the petitioner moved an application before the metropolitan magistrate, primarily praying for witness from the office of department of Power in the Govt. of NCT of Delhi to be summoned, he placing reliance on a communication dated 09.07.2015 emanating from the said office indicating, *inter alia*, that his conditions of service under erstwhile DVB had continued notwithstanding the transfer of his services to the corporate entities. The metropolitan magistrate, by order dated 14.09.2015, declined to issue any such summons referring to the earlier decision on the plea concerning the protection under Section 197 Cr.P.C., as affirmed by the revisional court. Another challenge to the last said order in the revisional court, by criminal revision no.57/2016, met with the same fate as the petition was dismissed by order dated 25.01.2016. The last said two orders have been assailed by CrI.M.C.3298/2016, presented under Section 482 Cr.P.C.

8. The contentions raised by the petition essentially give rise to mixed questions of fact and law. It needs to be inquired into as to whether he falls within the definition of the expression “*public servant*” and further as to whether he is entitled to the protection of Section 197 Cr.P.C. His reliance on the communication dated

09.07.2015 cannot be short shrifted. It may not be correct to decide this issue solely by observation of a learned single Judge of this court in the decision in *Ashok Kumar Raswant* (supra). As is clear from the later part of the said decision (in para 20), the observations with regard to status of such employees of DVB as had been placed at the disposal of the power distribution companies, are in the nature of obiter. The learned Judge, while rejecting the revisional challenge to the order framing charge against the petitioner in the said case, eventually took the view that the plea of protection of pre-requisite of sanction (under Section 19 of Prevention of Corruption Act) not having been taken earlier, it not having been shown that it had caused “*failure of justice*”, the revisional court could not inhibit the ongoing process on the charge for the offence under Prevention of Corruption Act before the special court.

9. In the considered view of this court, in all fairness, the petitioner deserves an opportunity to substantiate his plea that he is entitled to the protection of section 197 Cr.P.C. and, for this, he would be entitled to lead evidence in defence. At the hearing, the learned counsel for the petitioner clarified that he is not insisting on such opportunity to be given at this stage and that he would be satisfied if the issue is kept open and such opportunity is made available to him when the case reaches the stage of defence evidence. Ordered accordingly.

10. Consequently, it is directed that the concerned criminal court shall afford an opportunity to the petitioner to lead evidence in

defence at the appropriate stage of the process of trial, inclusive of on the subject of pre-requisite of sanction under Section 197 Cr.P.C. The contentions of both sides are kept open. In this view, nothing in the impugned orders shall be treated by the trial court as final expression of opinion on merits on this score.

11. With the above directions, the petitions and the applications filed therewith are disposed of.

R.K.GAUBA, J.

NOVEMBER 22, 2018

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