

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.13364 of 2018 (O&M)

Date of Decision.23.10.2019

Satish Kumar

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Lalit Rishi, Advocate and
Mr. Harsh Mehla, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J. (ORAL)

The challenge in the present petition is to the orders dated 26.10.2015 (Annexure P-4), 29.10.2015 (Annexure P-5), 08.06.2016 (Annexure P-7) and 21.10.2017 (Annexure P-10).

The edifice of the controversy involved in the present case is that petitioner initially appointed as Constable on 28.10.2000, in the year 2013, was promoted as Head Constable. In the year 2014, petitioner along others apprehended one criminal, who was wanted in 26 cases, therefore, as a result of his work, was awarded Own Rank and Pay Promotion as Assistant Sub Inspector. He was falsely implicated in FIR No.37 dated 15.12.2014 under Section 7 and 13 of Prevention of Corruption Act with police station State Vigilance Bureau (SVB), Rohtak on the basis of complaint made by one Shamsher Singh son of Hawa Singh, whose brother Shera was falsely implicated in FIR No.454 dated 30.11.2014, which was being investigated by SI Rattan Singh of CIA-III, Rohtak. The allegation was that petitioner along with one Manoj asked for a bribe of ₹5 lakhs to

release his brother from the clutches of police and FIR aforementioned. On registration of FIR, petitioner was placed under suspension and was simultaneously departmentally proceeded as per Punjab Police Rules. Petitioner was served with a charge-sheet and accordingly, enquiry officer was appointed.

Mr. D.S. Patwalia, learned Senior Counsel assisted by Mr. Lalit Rishi and Mr. Harsh Mehla, Advocates appearing for the petitioner in support of contentions raised, made following submissions:-

(a) Allegations in the departmental proceedings vis-a-vis charge-sheet in criminal proceedings are identical. Even most of witnesses in the criminal case and departmental proceedings are also identical.

(b) The criminal case has resulted into acquittal as the star witnesses turned hostile.

(c) The Department cannot take aid of provisions of Rule 16.2 of Punjab Police Rules as applicable to Haryana, as acquittal means honourable acquittal as per judgment of Coordinate Bench of this Court in **Pawan Kumar Vs. The State of Haryana and others** passed in CWP No.4568 of 2013 dated 08.04.2015.

(d) The enquiry officer has not given independent view but referred statement of witnesses. The view rather is based upon the fact that the petitioner was tried under a, pending, criminal case and accordingly, was indicted of a major penalty.

(e) The appellate and the revisional authority also dismissed the appeal/revision without application of mind, particularly,

the Revisional Authority, as by that time, there was already an acquittal in February, 2017 whereas the revision was decided in October, 2017.

(f) The law with regard to continuation of criminal court proceedings is no longer *res integra*, in view of the finding given by Hon'ble Supreme Court in **Noida Entrepreneurs Association Vs. Noida and others (2007) 10 SCC 38**. It was a where delinquent officer had sought indulgence of the Court for quashing of the departmental enquiry during the pendency of criminal case involving alleged commission of offence under Section 7 and 13 of the Prevention of Corruption Act.

(g) In support of aforementioned contentions, relied upon para 23 to 25, 31 and 32 of judgment rendered by Hon'ble Supreme Court in **G.M. Tank Vs. State of Gurajat and another 2006 (3) SCT 252**, paras 16 and 17 of judgment rendered by this Court in **Vijay Pal and others Vs. State of Haryana and others 2017 (2) SCT 479**. **Satish Kumar Goel Vs. State of Haryana 2018 (1) SCT 801**, thus, urges this Court for quashing the orders under challenge by praying reinstatement of petitioner with all consequential benefits.

Per contra, Mr. Gaurav Jindal, Addl. A.G., Haryana submitted that parameters of burden of proof in departmental proceedings and criminal case are totally different. The petitioner cannot be permitted to take benefit of acquittal on the ground of star witnesses turned hostile. In support of aforementioned contention, relied upon Rule 16.2 of the Punjab Police Rules, 1934 applicable to Haryana. He further stated that degree of proof in

criminal and departmental proceedings are different. Since in the instant case, the departmental witnesses have categorically proved involvement of the petitioner indulging into extraneous consideration, much less, extraction of money, which has been recovered, cannot seek reinstatement on the basis of acquittal. Reliance has been placed on judgment rendered by Hon'ble Supreme Court in **Shashi Bhushan Prasad Vs. Inspector General, Central Industrial Security Force and others (2019) 7 SCC 797.**

Since the enquiry officer found that delinquent officer i.e. petitioner, accepted the bribe, which is indiscipline and intolerable in police force. Acceptance of bribe is gravest misconduct, rightly so, service of the petitioner has been dispensed with.

The appellate authority as well as the revisional authority examined the matter threadbare and by noticing his involvement did not differ with recommendation of enquiry officer. Disciplinary force indulging into such activities should be dealt with major punishment of dismissal. In the present case, evidence was sufficient to prove the charge, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book. It would be necessary to reproduce charge sheet before initiation of departmental proceedings, summary of allegations served upon the petitioner, operative part of enquiry report and relevant portion of criminal case.

“CHARGE SHEET

I, Vijay Pal, Deputy Superintendent of Police, Haryana Police, Rohtak after examining the statements of the prosecution witnesses and the documents, charge you O.R.P./A.S.I. Satish Kumar 1399/Rohtak that when you were

posted in Crime Branch-1, Rohtak as Researcher, then on 15.12.2014 the complainant Shamsher Singh son of Hawa Singh, Village Asan, District Rohtak had submitted an application to the Inspector, State Vigilance Bureau, against you that My elder brother Shera son of Hawa Singh is an agriculturist and also studies in Ph.D. Crime Branch-3, Rohtak has got registered an FIR No.454 dated 30.11.2014 P.S. Sampla against my brother. The names of other persons are also mentioned in this F.I.R. My brother is innocent and he is being falsely implicating. The investigation of this case is being

conducted by S.I. Rattan Singh, Crime Branch-3, Rohtak. A.S.I. Satish Kumar, posted in C.I.A., Rohtak has contacted my brother Shera on his mobile No.98138-26769 from the mobile of his brother bearing No.78189-56400. Satish told that Rs.5,00,000/- would be charged. They had a talk with S.I. Rattan Singh. Your case would get lighter, with the result you would be acquitted from the Court, otherwise, you go anywhere, you would not get the bail. We do not want to give bribe, but the persons in Crime Branch are compelling us to give bribe. I want to get them caught red-handed. Legal action should be taken. As per the talk, we have come with Rs.3,00,000/-. Kindly legal action be taken. Upon this, Inspector Basheshar Singh, State Vigilance Bureau registered an F.I.R. No.37 dated 15.12.2014 against you U/s 7/13 P.C. Act P.S. State Vigilance Bureau, Rohtak and during the investigation you O.R.P./A.S.I. Satish Kumar No.1399/Rohtak was caught red handed by taking a bribe of Rs.3,00,000/- from the complainant Shamsher Singh. Thus by taking a bribe you have shown sheer carelessness and indiscipline and lowered the image of the Department of Police in the eyes of general public.

Your this act is condemnable and punishable.

Sd/-

*Deputy Superintendent of Police,
Rohtak.*

Dated:21.4.2015”

Summary of allegations.

There is allegation against you ORP, ASI Satish Kumar No.1399/Rohtak that while you were posted as Investigating Officer in Crime Branch-1 Rohtak, then on 15/12/2014 the complainant Shamsher son of Harbans Singh, Village Asand, District Rohtak had submitted an application against you to the Inspector, State Vigilance Bureau that “My elder brother Shera son of Hawa Singh is an Agriculturist and also studies in Ph.D. An FIR No.454 dated 30/11/2014 has been got registered by Crime Branch-3, Rohtak at P.S. Sampla against my brother. The names of other persons are also mentioned in this FIR. My brother is innocent and he is being falsely implicated. The investigation of this case is being conducted by SI Rattan Singh Crime Branch-3. ORP/ASI Satish Kumar, posted in Crime Branch has contacted my brother Shera on his mobile No.98138-26769 from the mobile of his brother bearing No.78189-56400. Satish told that Rs.5,00,000/- would be charged. They had a talk with S.I. Rattan Singh. Your case would get lighter, with the result you would be acquitted from the court, otherwise, you go anywhere, you would not get the bail. We do not want to give bribe, but the person in crime Branch compelled us to give bribe. I want to get them caught red handed. As per the talk, we have come with Rs.3,00,000/-. Kindly legal action be taken.” Upon this Inspector Bisheshar Singh, State Vigilance Bureau has registered an FIR No.37 dated 15/12/2014 under Sections 7/13 PC Act, at P.S. State Vigilance Bureau, Rohtak and during investigation, you ORP/ASI Satish Kumar No.1399/Rohtak were caught red-handed by accepting bribe of Rs.3,00,000/- from the complainant Shamsher Singh. By doing so, you have shown gross negligence and lowered the image of the Department of Police. Thereupon as per the orders of Superintendent of Police, Rohtak, Departmental Enquiry is being initiated against you ORP/ASI Satish Kumar No.1399/Rohtak.

Thereafter upon the transfer of Sh. Om Parkash Arora from the district, this departmental inquiry was entrusted to me vide order No.8982-87 dated 18.2.2015 passed by Superintendent of Police, Rohtak.

CONCLUSION OF THE REPORT

In the departmental inquiry, there is an allegation against O.R.P./A.S.I. Satish Kumar No.1399/Rohtak that when he was posted in Crime Branch-1, Rohtak, on 15.12.2014 the complainant Shamsher son of Hawa Singh, village Asan, District Rohtak had given an application to State Vigilance Bureau against the erring official Satish Kumar for falsely implicating the brother of Shamsher namely Shera son of Hawa Singh, village Asan in F.I.R. No.454 dated 30.11.2014, pending in Crime Branch-3, Rohtak and for compelling him to give bribe for deleting his name from the F.I.R. and for getting the case lighter. Upon this, State Vigilance Bureau, Rohtak on 15.12.2014 caught red handed O.R.P./A.S.I. Satish Kumar No.1399/Rohtak for asking bribe of Rs.3,00,000/- and registered an F.I.R. No.37 dated 15.12.2014 under Sections 7/13 P.C. Act, Police station State Vigilance Bureau, Rohtak. Thus this departmental inquiry has been initiated.

The statements of the prosecution witnesses were recorded. The witness of prosecution side Shamsher son of Hawa Singh, caste Jat, resident of Asan got recorded in his statement that officials from C.I.A.-3 were repeatedly coming to his house in search of his brother Sheru and were telling that the name of Shera figures in an F.I.R., thus produce him/ Aggrieved from this, Shamsher talked with O.R.P. Satish through his known person namely Manoj, resident of Sisana. Manoj told him that he had talked with A.S.I. Satish, A.S.I. Sanjiv and S.I. Jagbir. They would charge Rs.5 lacs, your work would be done. Aggrieved by this, the complainant gave an application to Vigilance Rohtak about this deal and thereafter upon my asking, Manoj called A.S.I. Satish in Sector: 3 and

asked him to call A.S.I. Sanjiv and S.I. Jagbir also and he would talk with them face to face. At that time, he also brought a sum of Rs.3,00,000/- with him. A.S.I. Satish talked to A.S.I. Sanjiv. A.S.I. Sanjiv told him that he was out of station. The work would be done. He tried to give the money to Satish and as per the instructions of Satish and Manoj, he kept the amount Rs.3,00,000/- in Manoj's car, which was recovered by Vigilance team upon conducting the raid and registered a case.

The prosecution witness Inspector Basheshar No.42/H.A.P. State Vigilance, Hissar got recorded his statement that on 15.12.2014, he was posted in district Rohtak, then Shamsher son of Hawa Singh, caste Jat, resident of village Asan, Police station Sampla had given an application regarding falsely implicating his brother in F.I.R. No.454 dated 30.11.2014, P.S. Sampla and the demand of Rs.5,00,000/- by A.S.I. Satish, posted in C.I.A.-3, Rohtak for deleting the name from the F.I.R. and for catching him red handed and for taking legal action. Upon this, after the registration of an F.I.R. under Section 7 P.C. Act, the report was sent to the police station State Vigilance, Rohtak through E.H.C. Sukhbir 371/Rohtak and O.R.P./A.S.I. Satish was caught red handed by the raiding party and a sum of Rs.3,00,000/- was recovered from him. A private person namely Manoj, resident of village Sisana was also arrested in this case under Section 8 P.C. Act.

During the investigation, in the departmental inquiry, the statements of the prosecution witnesses, defence witnesses and the written reply of the erring official was examined carefully and found that on the complaint of Shamsher son of Hawa Singh, caste Jat, resident of Asan, an F.I.R. No.37 dated 15.12.2014 under sections 7/13 P.C. Act stands registered in police station State Vigilance Bureau and during the investigation the erring official O.R.P./A.S.I. Satish Kumar No.1399/Rohtak has been arrested. The case is under

consideration. Thus I came to the conclusion that the charges levelled in the charge sheet against the erring official O.R.P./A.S.I. Satish Kumar No.1399/Rohtak are proved.”

Criminal Court judgment.

After considering the contentions raised by the learned Public Prosecutor and the learned defence counsel and after going through the material on the State and the record, this Court is of a considered view that in this case the accused Satish has been charged under Sections 7 and 13 of the Prevention of Corruption Act as he demanded Rs.5,00,000/- and accepted Rs.3,00,000/- as bribe from the complainant. The accused Manoj Kumar has been charged under Section 8 of the Prevention of Act as he abetted the commission of the offence by facilitating Satish Kumar, a public servant to misuse his official position by demanding and accepting illegal gratification.

16. In this case, in order to prove the ingredients of Section 7 and 13 of the Prevention of Corruption Act, 1988, the prosecution is duty bound to prove as under:-

- (1) Demand of illegal gratification by public servant.*
- (ii) Acceptance of illegal gratification by public servant.*
- (iii) The recovery of illegal gratification.*

The demand and acceptance of the illegal gratification can be proved by the complainant as well as by examining shadow witness. In this case, the complainant Shamsheer Singh when appeared in the witness box has deposed that a criminal case was registered against his brother Sher Singh @ Shera on 30.11.2014 with First Information Report No.454 of 2014 at Police Station Sampla. This case was being investigated by Inspector Jagbir Singh, Inspector Rattan Singh and ASI Sanjeev. Inspector Jagbir etc. were conducting raid at their house. ASI Sanjeev Kumar and Inspector Jagbir Singh wanted to implicate his brother falsely and was demanding Rs.5,00,000/- as bribe for declaring his brother innocent. He

did not want to pay bribe to ASI Sanjeev and Inspector Jagbir, so he contacted SVB, Rohtak on 12.12.2014 and handed over the tainted money to the tune of Rs.3,00,000/- which was settled by ASI Sanjeev and Inspector Jagbir Singh. The aforesaid persons asked to deliver the tainted money in the market of Sector-3, Rohtak. Thereafter, the complainant handed over Rs.3,00,000/- to the official of SVB and they reached at the market of Sector-3, Rohtak. He along with his friend Manoj (the accused) reached in the market of Sector-3, Rohtak and waited for ASI Sanjeev and Inspector Jagbir. Meanwhile, a known of Manoj came there. Manoj alighted from the car and shook hand with that person, meanwhile SVB officials had apprehended Manoj and that person. Manoj and that person were brought to SVB office. He was asked to append his signature on many documents. On 16.12.2014, he gave the statement before learned Magistrate under the pressure of SVB officials. He was declared hostile on the request of learned Public Prosecutor. On his being cross-examined by learned Public Prosecutor, this witness has stated that the application Exhibit P336 was not given by him, though the same bears his signature, which was taken by SVB officials on blank papers. He further disowned his statement Exhibit P337. He refuted all the suggestions given by learned Public Prosecutor regarding the contents of his application Exhibit P336 and statement Exhibit P337. He refuted the suggestions given by learned Public Prosecutor regarding the contents of his statement Exhibit P341 given by him before learned Judicial Magistrate. He stated that the statement Exhibit P341 was given under the threat and pressure of police. He further denied of handing over the compact disk Exhibit P339 (MO) and its transcript P340 to police. Seizure memoes Exhibits P4, P5 and Exhibit P338 were signed by him but the signatures were taken on blank papers. Nothing fruitful could be the cross-examination by the learned Public Prosecutor.

19. Now coming to the facts in the instant case with the non-supportive attitude complainant Shamsher Singh and shadow witness Dharambir regarding demand of money as bribe, this court has to rely upon the indirect or circumstantial evidence led by the prosecution to prove the guilt of the accused. In this case, PW12 Inspector (Retd.) Visheshar Singh is only a witness of trap. He has not deposed anything about the demand of the bribe or acceptance thereof. So far as the circumstantial evidence is concerned, as per the prosecution story after conducting of the raid, the accused was apprehended and his hands and the cap were got washed with the solution of sodium carbonate and the water turned pink. Thus, the presence of phenolphthalein powder has been established by the prosecution, which leads to the inference that the accused has received the bribe money. But it is the prosecution story that tainted money was recovered from the rear seat of the Maruti car, which were wrapped in a red colour cap. In the statement of accused under Section 313 of Code of Criminal Procedure, the accused have explained that the officials of Vigilance department had touched his hand, moreover, the accused have been arrested by touch of the hand and it may be a case that Penolphthalein powder which was applied on the currency notes might have been transmitted from the hands of the officials of State Vigilance on the hands of the accused. Moreover, in the case titled **Meena (Smt.) wife of Balwant Hemke V. State of Maharashtra 2000 (2) RCR (Criminal) 661; 2000 (5) SCC 21**, it has been held that mere recovery of the currency notes and positive result of the phenolphthalein test is not enough to establish the guilt of the appellant on the basis of perfunctory nature of materials and prevaricating type of evidence. The same view has been taken by the Punjab & Haryana High Court in case titled **Anand Parkash Vs. State of Haryana 2008 (2) RCR (Criminal) 335 (P&H)**. So, in this case, this is not a circumstantial evidence which could connect the accused with the guilt.

20. Another circumstantial evidence collected against the accused is the statements under Section 164 of Code of Criminal Procedure recorded by PW13 Shri Amandeep, the then learned Judicial Magistrate 1 Class, Rohtak. But the evidentiary value of the statements of the complainant Shamsher Singh as well as shadow witness Dharambir recorded under Section 164 of Code of Criminal Procedure are just like the evidentiary value of the statements recorded under Section 161 of Code of Criminal Procedure and it cannot be the basis to hold the accused guilty. In this regard, reliance can be placed on the case titled **Brij Nath Sah Versus State of Bihar, 2010(3) BCR/Criminal) 424** in which Hon'ble Apex Court has held that the statement recorded under Section 164 of Code of Criminal Procedure is not substantive evidence and can be utilized only to corroborate and contradict the witnesses viz-a-viz statement made in the Court. In other words, it can be utilized only as a previous statement and nothing more. In the instant case also, the statements of complainant Shamsher Singh and shadow witness Dharambir are not recorded under Section 164 of Code of Criminal Procedure is not sufficient to hold the accused guilty.

21. Another circumstantial evidence against the accused is the call details of accused Satish, Manoj and the brother of the complainant Sher Singh @ Shera, which are Exhibits P316, P319, P322, P325 and P328. However, no evidence has been collected by the prosecution that the accused Satish was using the mobile phone bearing No.9466856260 and he had any talk with Sher Singh @ Shera. The prosecution has placed on record the call details of Manoj Exhibit P322 in which it has been shown that he used to talk on his mobile phone bearing No.8053052727 with the mobile phone of Shera bearing No.9813826769 but the prosecution has not examined Sher Singh @ Shera who was the best person for the prosecution to disclose what conversation taken place between them. Keeping in view the statement of the complainant Shamsher Singh and

shadow witness Dharambir Singh, the aforesaid call details are of no significance to connect the accused with the demand and acceptance of the bribe.

22. Another circumstantial evidence against the accused is in the shape of compact disk Exhibit P339 and its transcript Exhibit P340 showing the conversation between Shera, Manoj and Satish but this compact disk has not been sent to Forensic Science Laboratory to check whether its content are genuine and the same is not doctored. No sample voice of Sher Singh, Manoj and Satish has been taken nor the sample voice has been got compared with the contents of compact disk Exhibit P339 from any Forensic Science Laboratory. No original device used to record the conversation has been produced in the Court. In the absence of examination of original instrument with which the voices of aforesaid persons were recorded in compact disk Exhibit P339 and in the absence of examination of the original Chip/memory card of the mobile etc., no much reliance can be placed on the compact disk Exhibit P339 and transcript Exhibit P340.

25. In this case, so far as the acceptance of tainted money as bribe is concerned, as discussed above, the complainant Shamsher Singh has specifically denied that the accused had accepted the money as bribe rather he has stated that the tainted money was taken out by the officials of SVB from the Alto car in which he along-with Manoj was sitting. It is also the case of the prosecution that the tainted money was not recovered from the person of either of the accused rather it has been recovered from Alto car. In these circumstances, it cannot be said that the accused had accepted the tainted money as bribe.

..... "The above decision is squarely applicable to the facts of the present case. When PW1 Ramesh himself had disowned what he has stated in his initial complaint in Exh.P1 before PW4 Inspector Santosh Kumar and there is no other evidence to prove that the accused had made any demand, the evidence

of PW3 Kumaraswamy and the contents of Exh.Pl complaint cannot be relied upon to conclude that the said material furnishes proof of demand allegedly made by the accused. The High Court was not correct in holding the demand alleged to be made by the accused as proved. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 13(1) (d) of the Act and the conviction and sentence imposed on the appellant are liable to be set aside."

In the instant case also, the complainant Shamsher Singh and shadow witness Dharambir Singh have turned hostile so far as demand and acceptance of money bribe is concerned. Thus, the primary facts regarding demand and acceptance of the money as bribe has not been proved. Mere possession and recovery of currency from the accused without proof of demand will not bring home the offence under section 13(1)(d) of the Act.

On perusal of finding of the Enquiry Officer as well as the Criminal court, it is axiomatic that the Enquiry Officer did not indict the petitioner on the basis of documents and statement of departmental witnesses but merely on the premise that the petitioner was, at that time, facing criminal case. Be that as it may, the law with regard to continuation of both the proceedings is no longer *res integra*. Criminal proceedings cannot be stalled at the instance of the delinquent officer. At the best, intervention can be given to examine the star witnesses first in criminal case and later in the departmental proceedings. Controversy with regard to conviction and indictment in the departmental proceedings has been pondered upon by Hon'ble Supreme Court in **G.M. Tank Vs. State of Gujarat and others** wherein in paragraphs 23 to 25, 31 and 32 it has been

held as under:-

“23. In the case of Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.(supra), the question before this Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. In Paragraph 34, this Court held as under :

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom." The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

24. *In R.P. Kapur vs. Union of India (supra)*, a Constitution Bench of this Court observed:

"If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow, where the acquittal is other than honourable."(emphasis supplied)

25. *In the case of Corporation of the City of Nagpur, Civil Lines, Nagpur & Anr. Vs. Ramchandra G. Modak & Ors. (supra)*, the same question arose before this Court. This Court, in paragraph 6, held as under:

"6.The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honorably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. "¶emphasis supplied).

31. *The judgments relied on by the learned counsel appearing for the respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental*

proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was

found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.”

A Coordinate Bench of this Court in para 9 of judgment rendered in **Satish Kumar Goel Vs. State of Haryana 2018 (1) SCT 801** held as under:-

“9. In the present case as well, the petitioner has been acquitted since main witnesses in this case have not supported the prosecution case and prosecution had failed to build the edifice of evidence and resultantly failed to prove the guilt of the appellant beyond reasonable shadow of doubt. Recovery of the alleged tainted notes has been effected from the drawer of the table and not from the person of the appellant. The recovery further became doubtful. The office of the appellant was open to everyone specially staff, so in connivance with staff such tainted money can be placed in the drawer of the table too. Further, the complainant and the shadow witness have turned hostile with regard to alleged demand, recovery and acceptance and thus, the benefit of doubt was given to the accused-appellant.

Further this Court was considering a case of [Shashi Kumar v. Uttar Haryana Bijli Vitran Nigam Ltd. and others](#) who was dismissed from service on the basis of conviction. This Court held that if the removal from service was only on the basis of conviction without considering any other material or circumstances, the employee will be entitled to be reinstated with all consequential benefits and full back wages on acquittal by the appellate Court whether honourably or giving benefits of doubt the charge being not proved beyond

reasonable doubt. Once the charge is not proved, the acquittal is always honourable for all purposes. This Court allowed the writ petition by relying upon a division bench judgment of this Court in a case of Hukam Singh, Lecturer in Hindu Government Sr. GAURAV ARORA 2016.02.16 15:43 I attest to the accuracy and integrity of this document Sec. [School Indri v. State of Haryana](#) and anr, 2001(2) SCT 696 (P&H) whereby Rule 7.3 and 7.5 of Punjab Civil Service Rules were considered in detail. In para 7 of the judgment, it has been observed as under:-

7.3 (1) When a Government employee, who has been dismissed, removed, compulsorily retired or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement shall consider and make a specific order :-

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and

(b) whether or not the said period be treated as a period spent on duty.

(2) Whether the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be." Rule 7.5 of the Rules also assumes importance. In this connection, reference can well be made to Rule 7.5 of

the Rules which deals with suspension during pendency of criminal proceedings and effect thereafter. It reads as under :-

"7.5 An employee of Government against whom proceeding have been taken either for his arrest for debt or on a criminal charge or GAURAV ARORA 2016.02.16 15:43 I attest to the accuracy and integrity of this document who is detained under any law providing for preventive detention should be considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principle laid down in rule 7.2) for such period until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowance for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

It is abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that special Rule will always taken precedence over the general rule and consequently it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages because, as mentioned above, the

earlier decisions referred to above have little application in the present case."

On perusal of aforementioned findings, it is irresistibly concluded once identical and similar witnesses have been examined in both proceedings i.e. (departmental and criminal) but departmental proceedings results into indictment vis-a-vis the acquittal in criminal case, the departmental proceedings cannot stand. It would be totally oppressive to allow except findings recorded in the departmental proceedings.

There would have been force in argument of Mr. Jindal, had the department discharged the burden independently that of the witnesses examined in the criminal case to bring the case with the ratio culled out in **Shashi Bhushan Prasad** (supra).

Intriguingly, the complainant was examined prior in time in criminal proceedings than in departmental proceedings. It is also matter of record that State has not preferred any appeal against the acquittal. Even the quasi judicial authorities i.e. appellate and revisional authority, particularly, the revisional authority dismissed the revision petition by vaguely rejecting contention of petitioner qua the acquittal. Once the provisions of rules provide availment of remedies, they are supposed to act reasonably with due application of mind. Had there been not a reference of the acquittal, it would have been fit case to remand the matter to the revisional authority.

Even if the charges of misconduct and indiscipline are fall out of registration of FIR under various sections of Indian Penal Code including Section 7 and 13 of Prevention of Corruption Act, the pith and substance of allegation, is that, petitioner along with Manoj played pivotal role in making the complainant believed to get his brother discharged or removed

from list of accused persons in FIR No.454 of 2014. Concededly, neither the petitioner nor Manoj Kumar were investigating officers, thus, there cannot be any imputation on the petitioner. Enquiry Officer of Deputy Superintendent of Police rank is expected to examine witnesses separately and noticed evidence of petitioner, much less, cross-examination and thereafter should have, independently, formed an opinion. Even connection of friendship of enquiry officer with petitioner and Manoj has not been proved on record. In other words, department has miserably failed to prove any nexus. For the sake of repetition, the reasoning assigned does not stand the touchstone of reasonability and the impugned orders are not sustainable, accordingly, are hereby set aside.

Writ petition is allowed.

Respondents are directed to reinstate the petitioner in service and release all the statutory benefits entitled to in accordance with law within a period of two months from the date of receipt of certified copy of this order.

(AMIT RAWAL)
JUDGE

October 23, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No