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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 13.04.2022Pronounced on: 04.07.2022

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W.P.(CRL) 1279/2021 & CRL.M.A. 10847/2021**JOHNSON JACOB**

..... Petitioner

Through: Dr Alok, Mr Siddharth Narang, Ms
Aanchal Budhraj, Mr Rohit Kumar,
Ms Gitika Sharma and Ms Smriti
Waha, Advocates

versus

STATE

..... Respondents

Through: Ms Nandita Rao, ASC (Crl.) GNCTD

CORAM:**HON'BLE MR. JUSTICE JASMEET SINGH****J U D G M E N T****: JASMEET SINGH, J**

1. The present writ petition has been filed seeking quashing and setting aside the order on charge and framing of charge dated 10.03.2021 passed by learned Special Judge (PC Act) ACB-01, Rouse Avenue Courts, Delhi, in which charges under section 7/13(1)(d) and 13(2) of the Prevention of Corruption Act have been framed.

2. The brief facts of the petition are that the complainant, Mr. Ravneet Singh has applied for an Arms licence for himself on 12.01.2014 and the accused (petitioner herein) SI Johnson Jacob, having mobile No. 7503075999, visited his residence for inquiry regarding the same.

3. It is further submitted in the complaint that the petitioner asked the complainant to pay a bribe of Rs. 20,000/- for sending his report for grant of Arms licence and after some negotiation the petitioner reduced the amount



to Rs. 10,000/-. The complainant, thus, handed over a sum of Rs. 1,000/- to the petitioner, recorded the conversation and provided a CD of the same later on.

4. It is further alleged that the petitioner contacted the complainant to meet him in the evening at P.S. Vikaspuri for collecting the remaining balance amount of Rs. 9,000/-.

5. On 15.01.2014, the complaint was marked to Inspector B.K. Singh for investigation. Inspector B.K. Singh confirmed the facts mentioned in the complaint in the presence of panch witness Sh. Karamchand s/o Sh. Kashiram posted as UDC, Industries Department, 419, FIE Patparganj, New Delhi.

6. Thereafter, during raid proceedings, on instructions of Inspector Rakesh Kumar, the complainant Mr. Ravneet Singh handed over GC Notes of Rs. 9,000/- smeared with phenolphthalein powder to the petitioner on his demand.

7. Subsequently, on personal search of the accused/petitioner 10 GC notes of denomination of 500 and 4 notes of Rs. 1,000/- amounting to a total of Rs. 9,000/- were recovered from his right hand and the serial number of the recovered currency notes tallied with the serial numbers noted in the pre-raid proceedings.

8. The right hand wash of the accused was put into Sodium Carbonate solution which turned pink and was then seized in two bottles and all the exhibits of the case were taken into possession.

9. During investigation, the petitioner was interrogated and an FIR was lodged against him. After investigation, charges were framed and the accused/petitioner was summoned. After hearing the arguments, *vide* order



dated 10.03.2021, the Special Judge (PC Act), ACB-01, Rouse Avenue Courts, Delhi framed charges under section 7/13 of the Prevention of Corruption Act, 1988 against the Petitioner.

10. The petitioner thus, approached this court seeking quashing and setting aside of the order on charge dated 10.03.2021. The two grounds on which the petitioner seeks quashing of the order dated 10.03.2021 are :-

(i) That the petitioner has been exonerated in departmental proceedings and according to the judgment of the Supreme Court in 2020 (9) SCC 636 titled "*Ashoo Surendranath Tewari V. The Deputy Superintendent of Police, EOW, CBI & Anr*", (2020) 9 SCC 636, criminal proceedings cannot continue against the petitioner.

(ii) That petitioner is a Sub Inspector in Delhi Police and thus The Anti-Corruption Branch of Delhi Government has no jurisdiction to investigate the offence against a Sub Inspector working in Delhi Police which falls under the Ministry of Home Affairs.

11. It is submitted by the petitioner that the allegations in the disciplinary proceedings and the FIR are a mirror image of each other and thus as the petitioner has been exonerated in the disciplinary enquiry, he cannot be convicted in the criminal proceedings. The comparative allegations are as under:

Allegations

FIR	Departmental Enquiry
➤ On 15.01.2014 the complainant Sh. Ravneet Singh gave a written complaint to the Anti-Corruption branch against SI Johnson Jacob. He stated in his complaint that he had applied for grant of Arms license for himself.	➤ That while posted at PS- Vikaspuri, SI Johnson Jacob was entrusted with verifying facts for grant of Arms License to Sh. Ravneet Singh.



➤ On 12.01.2014, SI Johnson Jacob came to the Complainants residence for enquiry and on 13.01.2014 SI Johnson Jacob asked the complainant to come into the Police Station.	➤That SI Johnson Jacob met Sh. Ravneet Singh at his residence on 12.01.2014 and called him to the Police Station for verification on 13.01.14.
➤ The complainant went to the police station and was asked to pay Rs.20,000 as a bribe. The complainant asked to reduce the amount and it was agreed that he would pay an amount of Rs.10,000 to SI Johnson Jacob. The complainant paid Rs.1,000 to him.	➤It was alleged that SI Johnson Jacob demanded Rs.20,000 as a bribe for clearing the report of Sh. Ravneet Singh for grant of Arms License and the same was agreed to by the latter party.
➤ The complainant recorded the conversation, wherein he was asked to come and pay the pending amount of Rs.9,000 in the evening.	➤The conversation of demand for bribe was recorded by Sh. Ravneet Singh on his mobile phone, but the same could not be authenticated.
	➤SI Johnson Jacob was caught red handed on the spot by the staff of Anti Corruption Branch, Delhi on 15.01.2014. The bribe of Rs.9,000 was then recovered from him and then a criminal case was registered
➤ The complainant then went and lodged the FIR and asked for action to be taken against SI Johnson Jacob.	

12. The disciplinary proceedings were quashed not on a technicality but on merits. The operative portion of the proceeding reads as under:

“ PW-1 has deposed that he tried to give money to the delinquent but he has refused to accept. It may be highly probable that the delinquent might have been came in contact of complainant’s hand with currency notes. The currency notes were found lying on the ground and someone picked them and his hands were not washed for testing. In these circumstances, hand wash test report, Exhibit PW-18/A becomes less significant.

In case of corruption, an unequivocal demand followed by undisputed acceptance of illegal gratification needs to be proved beyond doubt. In this case, the complainant himself deposed that



he himself offered bribe for his timely verification and the delinquent declined the offer. The recording of the demand by the complainant seems vitiated and not reliable under circumstances discussed above. It is a matter of fact the delinquent concluded the verification on 14.01.2014, well before the day of the raid. The complainant himself deposed that on the spot of the raid, he tried to give the currency but not succeeded and the stuff dropped on the ground. One member of the team collected the currency from the ground. He even did not count the same and denomination is not certain. No PW has deposed that the currency notes were recovered from possession of the delinquent.

The EO has meticulously considered all these facts and circumstances in the context of the charge upon the delinquent and concluded the proceeding with the finding that the charge on the delinquent not substituted.

Considering overall facts and circumstances related to the instant case, I am of the view that Enquiry Officer has rightly not proved the charges against the delinquent. Therefore, agreeing with the conclusion drawn by the Enquiry Officer, I, Hareesh H.P., Dy. Commissioner of Police, VII Bn, DAP, Delhi, exonerate SI (Exe.) Johnson Jacob No. D-4883 from the charge and departmental enquiry against him, is hereby, filed.”

13. In case of corruption, an unequivocal demand followed by undisputed acceptance of illegal gratification needs to be proved beyond doubt. In this case, the complainant himself deposed during the departmental enquiry that he offered a bribe for his timely verification and the petitioner herein declined it. The recording of the demand and subsequent filing of FIR by the complainant seems vitiated and not reliable under circumstances discussed above.

14. From the above departmental enquiry, it is noted that the complainant himself deposed that on the spot of the raid, he tried to give the currency but he was not successful in doing the same and the money fell on the ground. It



was only after the raid, that one member of the team collected the currency from the ground. He even did not count the same and denomination is not certain. It was further noted that the currency was not even counted and it was not certain that the same was ever in the hands of the petitioner.

15. It is argued before me, that the standard of proof in departmental proceedings, is based on preponderance of probability, which is lower than the standard of proof in criminal proceedings, where the case has to be proved beyond reasonable doubt.¹

16. If the department has not been able to prove the charges in their own departmental proceedings, where the test is lower then it is logical to presume that the charges would not be proved in criminal proceedings.

17. In '*Radheshyam Kejriwal v. State of West Bengal*', (2011) 3 SCC 581, which was later affirmed by the judgment of "*Ashoo Surendranath Tewari V. The Deputy Superintendent of Police*" (*supra*) the broad principles were culled out are as under:

"38. The ratio which can be culled out from these decisions can broadly be stated as follows;

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section*

¹ paragraph 7 of the judgment of Ashoo Surendranath (*supra*)



- 300 of the Code of Criminal Procedure;*
- (vi) *The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue, and*
 - (vii) *in case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."*

It finally concluded:

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

18. Ms. Nandita Rao, learned counsel for the respondent- State, has sought to distinguish the Judgment of "*Ashoo Surendranath Tewari V. The Deputy Superintendent of Police, EOW, CBI & Anr*" (*supra*) by relying on the judgment of "*State (NCT of Delhi) Vs. Ajay Kumar Tyagi*" (2012) 9 SCC 685. It has held as follows:

"24. Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya (Supra). In fact, there are precedents, to which we have referred to above, that speak eloquently a contrary view i.e. exoneration in departmental proceedings 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 proceedings 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 in 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.”

19. The judgment of Ajay Tyagi (*supra*) is distinguishable as there is no dispute with the proposition laid down that exoneration of departmental proceedings “*ipso facto would not result in criminal prosecution*”. The reason being that departmental proceedings can be quashed for a number of reasons, including certain technicalities such as disqualification of inquiry officers, procedural lapses, violation of principles of natural justice, etc.

20. However, I am of the view that when departmental proceedings and the criminal proceedings are a mirror image of each other and the accused has been exonerated on merits in the departmental inquiry, and not due to minor technicalities or irregularities, the criminal proceedings, on the same set of facts and circumstances, cannot be permitted to be continued as the standard of proof in departmental proceedings is much lower than the standard of proof in criminal proceedings. The same principle has been laid down by the Hon’ble Supreme Court in Ashoo Surendranath Tewari v. The Deputy Superintendent of Police (*supra*).



21. As regards the second argument of the petitioner, the learned counsel has drawn my attention to the judgment of the Hon'ble Supreme Court in *Government (NCT of Delhi) v. Union of India* (2020) 12 SCC 259 which held:

“ 71) Likewise, insofar as DANICS is concerned, the submission is that under the Delhi, Andaman & Nicobar Islands, Lakshasweep, Daman & Diu and Dadra & Nagar Haveli Civil Services Rules, 2003, same consequence follows. Following Rules were referred to:

“11. Appointment to the Service -

All appointment to the Service shall be made by the Appointing Authority to the Junior Administrative Grade-I or Junior Administrative Grade-II or Selection Grade or Entry Grade of the Service and not against any specific post included in the Service.

12. Posting -

Every member of the Service allocated to an Administration shall, unless he is appointed to an ex-cadre post, or is otherwise not available for holding a duty post owing to the exigencies of the public service, be posted against a duty post under the Administration by the Administrator concerned.

13. Allocation of members of the Service -

The Government shall, from time to time, allocate a member of the Service to any Administration for posting in terms of rule 12.”

72) It is argued that under the DANICS Rules, as per Rule 2(a) ‘Administration’ means the GNCTD, as per Rule 2(b) ‘Administrator’ means the Administrator of NCTD and as per Rule 2(k) ‘Government’ means the Government of India. Thus, while it is the Government of India that makes an officer available to GNCTD under Rule 13, the posting of that DANICS officer within the NCTD is to be made by the Administrator on the aid and advice of the Council of Ministers.

78) From the respective arguments of the parties reproduced above, it becomes clear that following aspects are undisputed:

78.1 The matter pertains to the ‘Services’ which consists of Indian



Administrative Service, Indian Police Service. Likewise, DANICS and DANIPS are common services catering to the requirements of various Union Territories including NCTD.

78.2 These are All India Services and the cadre in question is Union Territory Cadre which is common to all of the Union Territories and Delhi is one of them. Therefore the Cadre does not pertain to GNCTD itself. This cadre is administered by the Central Government through the Ministry of Home Affairs.

78.3 There is no dispute that insofar as allocation of personnel belonging to the aforesaid services is concerned, it is the Central Government through the Ministry of Home Affairs which has to pass the necessary orders. Similarly, the Central Government is empowered to transfer such personnel from one Union Territory to other.

*108) Pertinently, the appellant wants exclusive executive power in respect of the entries in List II, except Entries 1, 2 and 18, as well as all the subjects over List III. In this behalf, as noted above, contention of the appellant is that the Constitution Bench has so decided. However, when it comes to excepted matter in List II Entry 2, though powers of NCTD are totally excluded, by indirect method the appellant wants concurrent jurisdiction over the same. It would be difficult to accept such a position. It is also pertinent to mention that insofar as Notification dated November 08, 1993 is concerned, whereby ACB of NCTD at Old Secretariat as police station was created by the Lieutenant Governor, the same has not been challenged. No doubt, there was no elected Government at that time. The fact remains that this Notification has held the field even thereafter throughout. The impugned Notifications are only a modification to the aforesaid Notification dated 8-11-1993 to a limited extent whereby it is clarified that this earlier Notification shall be applicable to 'the officers and employees of that Government only (GNCTD)'. **Thus, the only effect is that the ACB is not empowered to investigate the offences of Central Government employees under the Prevention of Corruption Act. Admittedly, this investigation is carried out by the CBI. Therefore, it obviates the duality and conflict of jurisdiction as well.***

115) We, thus, uphold the validity of Notifications dated 23-7-2014 and 21-05-



2015.”

22. The relevant portion of the notification dated 21.05.15 passed by the Ministry of Home Affairs reads as under:

“The Anti Corruption Branch Police Station shall not take any cognizance of offences against Officers, Employees and Functionaries of the Central Government.”

23. It is submitted by the learned counsel for the petitioner that the procedural laws are retrospective in their operation unless otherwise specified. Thus, the ACB cannot investigate into the offences pertaining to Central Government employees i.e the petitioner herein falls under the Ministry of Home Affairs and any action taken by ACB would be impermissible and contrary to law.

24. On the other hand, Ms. Nandita Rao has drawn my attention to the judgment of ‘*Prem Chand v Union of India & Ors*’, passed by this Court in W.P (CRL) 1147/2015 dated 27.05.2015, wherein the notification of 2015 relied upon by the petitioner in Government (NCTD) v. Union of India has been upheld.

25. The judgment of Prem Chand v. Union of India (*supra*), categorically holds that the notification of May, 2015 is not retrospective in view of the exception carved out in the notification itself which reads as under:

“3. The contention urged on behalf of the petitioner is that the said Notification dated 21.05.2015 has retrospective effect and consequently action taken by the anti corruption branch police station resulting in the conviction and imposition of sentence on the petitioner is impermissible and contrary to law.

4. Mr. Mahajan, Learned Additional Standing Counsel (Criminal) on the other hand invites my attention to para 3 of the said



notification dated 21.05.2015 which reads as under:

“The Notification supersedes earlier Notification number S.O.853(E)[F.No.U-11030/2/98-UTL] dated 24th September, 1998 except as respects things done or omitted to be done before such supersession.

5. It is the submission of Mr. Mahajan that the notification dated 21.05.2015 itself clarifies that the said notification supersedes the earlier notification S.O.853(E)[F.No.U-11030/2/98-UTL] dated 24.09.1998 except as respects things done or omitted to be done before such supersession.”

26. It has been also held by a coordinate bench of this court in *Anil Kumar v. GNCT of Delhi* (2015) SCC Online Del 9633 that:

“ 66. After the judgment was reserved in the present application, the Ministry of Home Affairs has issued a notification bearing No. SO 1368(E) on 21.05.2015 thereby further amending the notification dated 08.11.1993 and, inter alia, providing that “ACB police station shall not take any cognizance of the offences against officers, employees and functionaries of the Central Government”. In my view, since the Union lacks the executive authority to act in respect of matters dealt with in Entries 1 & 2 of List III of the Seventh Schedule, the further executive fiat issued by the Union Government on 21.05.2015 is also suspect.

67. In the light of the aforesaid discussion, the submission of the applicant that the ACB of the GNCTD does not have the competence or jurisdiction to act on the complaint of the complainant is rejected. Since the applicant is a Delhi Police personnel serving the citizens in the NCTD and the functions of the Delhi Police personnel substantially and essentially relate to the affairs of the GNCTD, in my view, the ACB of the GNCTD has the jurisdiction to entertain and act on a



complaint under the PC Act in respect of a Delhi Police officer or official, and to investigate and prosecute the crime. This would also be in consonance with the guidelines issued by the CVC as contained in para 1.5.2(b) set out herein above.

68. I also find merit in the submission of Mr. Krishnan that the continued investigation into the crime in question by the ACB of GNCTD would not vitiate the eventual trial in the light of the judgment of the Supreme Court in A.C. Sharma (supra). In this regard, reference may also be made to Dr. G.S.R. Somaiyaji v. State through CBI, (2002) Crl LJ 795.”

27. In light of the aforesaid discussion, the argument of the petitioner that the ACB would not have jurisdiction to investigate into his case on the basis of a complaint made to them, cannot be sustained. Any official of the Central government accused of corruption cannot get away with the mere technicality of the Anti Corruption Branch not investigating them. When a complaint is made to an authority in charge, it is the duty of that authority to duly investigate and look into the said allegations. They may after due diligence, transfer the matter to the concerned authority to look into the same but they have the right to investigate the same at the time of lodging of the complaint.

28. In this view of the matter, I am unable to agree with the learned counsel for the petitioner on issue No. (ii) i.e. that as the petitioner is a Sub Inspector in Delhi Police, the Anti-Corruption Branch of Delhi Government can have no jurisdiction to investigate the offence against the Sub Inspector working in Delhi Police which falls under the Ministry of Home Affairs.

29. However, since I am of the view that the case of the petitioner is covered on the first argument and he has been exonerated in departmental



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proceedings and further there is no substantial material on record to show the need to continue the criminal proceedings against the petitioner, the petition is thus allowed and the order of charge dated 10.03.2021, passed by learned Special Judge (PC Act) CBI, Rouse Avenue Courts, Delhi, and all subsequent proceedings emanating therefrom are hereby set aside.

JASMEET SINGH, J

JULY 04, 2022/ 'dm'