

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12214 of 2017

Arising Out of PS. Case No.-82 Year-2008 Thana- RAMNAGAR District- West Champaran

Rajesh Kumar Gupta Son of Late Badri Prasad Gupta, resident of Mohalla -
Company Sarai, P.S. Sasaram, District - Rohtas

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Executive Engineer Road Division Ramnagar, P.S. Ramnagar, District-
West Champaran at present, Executive Engineer, Road Division, Bettiah,
P.S.- Nagar Thana Bettiah, District- West Champaran, Bettiah

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak
For the Opposite Party/s : Mr. Sri Zainul Abedin

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 12-04-2023 Heard learned counsel for the parties.

This application has been filed for quashing the order dated 10.02.2016 in Ramnagar P.S. Case No. 82 of 2008 passed by learned Sub-divisional Judicial Magistrate, Bagaha, West Champaran registered for the offences under Sections 420, 467, 468, 471 and 120(b) of the Indian Penal Code.

The prosecution story is that contractors changed their rate quoting page from 15% above Bill of Quantity(BOQ) rate to 0.3% above the BOQ rate in connivance with the Executive Engineer and the four contractors dropped tender @ 15% above the BOQ rate in the office of Executive Engineer. On examination, it was found that signature and seal at the rate



quoting page was quite different from other pages of tender.

It has been submitted by the learned senior counsel for the petitioner that Ramnagar P.S. Case No. 82 of 2008 was filed under Section 420, 467, 468, 471 and 120(b) of the Indian Penal Code against the petitioner and others which was investigated by the police and on 30.08.2014, Final Form was submitted saying that no evidence was found against the petitioner.

In the meantime, a departmental proceeding on the same set of facts as the allegations were levelled in the F.I.R. was initiated against the petitioner in which the petitioner was exonerated on 11.08.2008 but the Disciplinary Authority differed with the inquiry report and inflicted punishment on the petitioner by his order dated 05.12.2011.

The petitioner filed C.W.J.C. No. 21910 of 2012 challenging the punishment order which was allowed on 29.04.2014 and the order of punishment dated 05.12.2011 was quashed and a consequential order was also passed by the department on 26.06.2014 recalling the punishment.

It has been submitted by the learned senior counsel for the petitioner, Sri Y.V. Giri that in view of the judgment of the Hon'ble Supreme Court in the case of *Ashoo Surendranath*



Tewari vs. Deputy Superintendent of Police, EOW, CBI

reported in ***(2020) 9 SCC 636*** when the petitioner was exonerated in the departmental proceeding, he could not be prosecuted in a criminal case on the basis of the same allegation.

Paragraph 3, 7, 8 and 9 of the Hon'ble Supreme Court in the case of ***Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI (supra)*** reads as follows:

3. A charge-sheet was then filed on 26-7-2011 in the Court of Special Judge, CBI Cases in which it was alleged that the appellant had received an email on 25-5-2009 containing the RTGS details for the account with Federal Bank, Thripporur, which he then forwarded to Accused 5 (Muthukumar) who is said to be the kingpin involved in this crime and is since absconding. Apparently, based on Muthukumar's approval, the appellant then signed various cheques which were forwarded to other accounts.

7. A reading of this report shows that, at the highest, the appellant may be negligent without any criminal culpability. In fact, the positive finding of the CVC that the appellant appears to be a victim of Muthukumar's plot is of some importance.

8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In P.S. Rajya v. State of Bihar, the question before the Court was posed as follows: (SCC pp. 2-3, para 3)

"3. The short question that arises for our consideration in this appeal is whether the



respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission."

9. This Court then went on to state: (P.S. Rajya case², SCC p. 5, para 17)

"17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it."

It has also been submitted by the learned senior counsel for the petitioner, Sri Y.V. Giri that during investigation, no material was there to prosecute the petitioner still the learned Magistrate has differed with the Final Form and has taken cognizance without application of mind. The impugned order being a cryptic order without any reasons. It is settled law that any order without reasons is no order in the eye of law.

Paragraph 28 of the judgment of the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors.*** Reported in (1998) 5



SCC 749 reads as follows:

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

Learned counsel for the State has opposed the case and has submitted that the prosecution of the petitioner cannot be discontinued only on the basis of the fact that he has been exonerated in the departmental proceeding.

In the opinion of this Court, the aforesaid judgments of the Hon'ble Supreme Court in the case of ***Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI (supra)*** and ***Pepsi Foods Ltd. and Anr. vs. Special***



Judicial Magistrate and Ors. (supra) squarely cover the case of the petitioner, accordingly, this application is allowed.

The order dated 10.02.2016 in Ramnagar P.S. Case No. 82 of 2008 passed by learned Sub-divisional Judicial Magistrate, Bagaha, West Champaran is hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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