

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.370 of 2016

Arising Out of PS. Case No.-146 Year-2013 Thana- MANSI District- Khagaria

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Dinesh Kumar son of Turanti Das resident of Village - Chak Hussaini, P.S. - Mansi, District - Khagaria at present posted as Headmaster/Sanchalak, Utprean Kendra Madhya Vidyalaya Saidpur, Mansi, District - Khagaria.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Sri Parmanand Prasad resident of Village - Nohsa, P.O. - Gurusharanpur, P.S. - Ben, District - Nalanda, at present posted as District Program Officer, Khagaria.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Mishra
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 25-04-2023 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

This application is filed for quashing the order dated 28th July, 2015 passed by learned Sessions Judge, Khagaria in Cr. Revision No. 40 of 2015, by which the learned Sessions Judge has dismissed the revision application filed by the petitioner and affirmed the order dated 09.12.2014 passed by the learned Chief Judicial Magistrate, Khagaria in Mansi P.S. Case No. 146/2013 wherby and whereunder the learned Magistrate has taken cognizance against the petitioner for the offence punishable under Section 406 and 420 of the Indian Penal Code.

As per the prosecution story, the amount of Rs. 5,83,712/- was sanctioned for purchase of articles to run the project center of a school but on verification, it was found that the project center of the school was not running and the articles



were not found at center. The allegation against the petitioner is that he being the Headmaster of the school, has defalcated the said amount.

It has been submitted by the learned counsel for the petitioner that for the same allegation, as alleged in the present F.I.R., a departmental proceeding has been initiated against the petitioner by the competent authority wherein the petitioner has been exonerated vide memo no. 1247 dated 24.08.2015. He further submits that once the petitioner has been exonerated in the departmental proceeding, there is no chance that the petitioner will be convicted in the criminal trial based on the same charges. In support of his submission, he has relied upon a decision of the Hon'ble Supreme Court rendered in the case of ***Ashoo Surendranath Tewari Vs Deputy Superintendent of Police, E.O.W., C.B.I., and Anr. 2020 (9) SCC 636.***

Considered the submission of the parties.

In the case of ***Ashoo Surendranath Tewari Vs Deputy Superintendent of Police, E.O.W., C.B.I., and Anr. (Supra)*** has held as follows.

"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 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 for 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."

It appears that the charges against the petitioner in the departmental proceeding and in the criminal proceeding is similar. It also appears that in the departmental proceeding, the petitioner has been exonerated vide order dated 24.08.2015.

Considering the aforesaid facts and also the law laid down by the Hon'ble Supreme Court in the case of ***Ashoo Surendranath Tewari Vs Deputy Superintendent of Police, E.O.W., C.B.I., and Anr. (Supra)***, I find that the prosecution against the petitioner is fit to be quashed.

Accordingly, this application is allowed and the FIR vide Mansi P.S. Case No. 146 of 2023 and all consequential proceedings arising out of the aforesaid F.I.R. including the order dated 28.07.2015 passed by learned Sessions Judge, Khagaria in Cr. Revision No. 40 of 2015 and the order dated 09.12.2014 passed by the learned Chief Judicial Magistrate, Khagaria are hereby quashed in the interest of Justice.

(Sandeep Kumar, J)

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