

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 126 OF 2018

APPLICANT : Dr. Narendra S/o. Bhagwantrao
Mawale, Aged about 46 years,
Occupation : Service, R/o. Ranpise
Nagar, Near Kala Maroti Temple,
Akola, Dist. Akola.

//VERSUS//

NON-APPLICANT : State of Maharashtra, through P.S.O.
Murtijapur, Dist. Akola.

Mr. N.R. Saboo, Advocate for the Applicant.
Mr. A.R. Chutke, APP for the Non-applicant/State.

CORAM : G. A. SANAP, J.
DATED : 18th JULY, 2023.

ORAL JUDGMENT

Heard.

02] **Admit.** The application is heard finally by consent of
learned advocates for the parties.

03] In this revision application, challenge is to the order
dated 1st June, 2018, passed by learned Additional Sessions Judge,
Akola, whereby learned Additional Sessions Judge rejected the

application made for discharge at Exh.31 by the applicant, who is accused No.5 in Special Case No.5 of 2009.

04] The facts are as follows :-

On the basis of the report lodged by Dr. Arun Thosar, a Civil Surgeon, Akola, a crime bearing No.227 of 2006 dated 30th November, 2006 was registered for the offences punishable under Sections 406, 409, 420, 468, 471, 120-B read with Section 34 of the Indian Penal Code, 1860 (IPC) and Sections 7, 13(c), (d) of the Prevention of Corruption Act, 1988 (P.C. Act). It is the case of the prosecution that between 1st April, 2004 and 30th November, 2006, goods and articles were purchased by the Officers of Laxmibai Deshmukh Hospital, Murtizapur, District Akola without any sanction order from the Government as well as without sanction of grant. The investigation revealed that the sanction orders were forged and fabricated. On the basis of the forged and fabricated sanction orders, bills were submitted without actual purchase of the goods and articles. Several accused were involved in this conspiracy and misappropriation of the government money. The investigation revealed that pursuant to the conspiracy, the accused misappropriated a sum of Rs.26,90,18,908/- (rupees twenty six crores ninety lakhs eighteen

thousand nine hundred eight only). The Investigating Officer, during the course of investigation, collected voluminous documentary evidence and based on the documents, defined the role of each and every person involved in the conspiracy. After investigation, charge-sheet was filed against 25 accused. Learned Special Judge took the cognizance of the offences.

05] Applicant/accused No.5, after filing of the charge-sheet, applied for discharge under Section 227 of the Code of Criminal Procedure, 1973 (Cr.PC). The applicant, at the relevant time, was working as In-charge Superintendent and Drawing and Disbursing Officer of Laxmibai Deshmukh Hospital, Murtizapur between 1st August, 2005 and 29th November, 2006. It is his case that the Civil Surgeon, Civil Hospital, Akola at the relevant time was the Controlling Authority and as such was supposed to look after day-to-day affairs of the hospital. One Mr. Shaikh and Mr. Deshmukh, during the tenure of the applicant, were working as Storekeeper and Cashier respectively. It is his case that he has not committed any offence. He has not misappropriated a single pie of the Government. It is his case that while he was working as In-charge Superintendent of the said Hospital, he became suspicious of the activities of his Sub-ordinate Officers. He came to know that his

Sub-ordinate Officers submitted the bills by forging his signature.

06] On 10th November, 2006 he, therefore, reported the matter to the Deputy Director of Health and requested him to conduct necessary enquiry. On 13th November, 2006, he reported the matter to the Superintendent of Police and pointed out that his Sub-ordinate Officers had committed malpractices. The Deputy Director of Health, on the basis of his communication, ordered an audit of the hospital. The Special Audit Team conducted the audit of the hospital and found that there were serious irregularities and malpractices. Similarly, the Special Audit Team came across the misappropriation of the government money by submitting false and fabricated bills and documents. Ultimately, the Civil Surgeon, on the direction of the superior, lodged a report at Murtizapur Police Station. On the basis of his report, the crime, as above, was registered. The investigation was taken over by the C.I.D., Akola.

07] It is stated that in the charge-sheet, there is no evidence against him. Not a single bill out of 40 bills submitted to the treasury, was signed by him. He was not the author of the forged bills. In fact, when he became suspicious about the illegal acts of his Sub-ordinate Officers, he lodged the report. It is stated that on the basis of his report, the crime committed by various persons came to

light. It is stated that he was a whistleblower, but unfortunately he was made to face this prosecution. It is further stated that out of 40 bills, one bill was shown to have been signed by him. However, the investigation revealed that the signatures on one bill were forged. The report of the handwriting expert clearly states that the signatures on one bill were not made by accused No.5. It is further stated that on same set of facts and evidence, departmental enquiry was conducted against him. He has been exonerated in the departmental enquiry on same set of facts and evidence. He, therefore, filed an application for his discharge.

08] State has filed reply and opposed the application. It is contended that the audit of the hospital conducted by the Special Audit Team revealed misappropriation of a sum of Rs.26,90,18,908/- (rupees twenty six crores ninety lakhs eighteen thousand nine hundred eight only) in furtherance of the conspiracy hatched by all the accused. It is further stated that as far as the applicant/accused No.5 is concerned, there is voluminous evidence to frame the charge against him. According to the prosecution, during the relevant period, he was working as In-charge Superintendent and in the said capacity, he had passed 40 bills of Rs.8,09,34,226/- (rupees eight crores nine lakhs thirty four

thousand two hundred twenty six only). He played an active role in the misappropriation of the amount. There is evidence against him to presume that he has committed the offence. The evidence is sufficient to frame the charge against him.

09] Learned Additional Sessions Judge, on going through the record and proceedings, came to the conclusion that the case was not made out to discharge the applicant/accused No.5 and rejected the application. The applicant/accused No.5 has questioned the correctness of this order by filing this revision.

10] I have heard Mr. N.R. Saboo, learned advocate for the applicant/accused No.5 and Mr. A.R. Chutke, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

11] Learned advocate for the applicant/accused No.5 pointed out that the application made by accused No.5 was rejected by order dated 7th April, 2011. Accused No.5 had challenged the said order by filing a revision in this Court and this Court, by order dated 26th November, 2013, had set aside the said order and directed the learned Additional Sessions Judge to decide the said application afresh by recording the reasons on

consideration of the entire material on record. Learned advocate submitted that learned Additional Sessions Judge even after remand, has not taken the entire material into consideration and came to a wrong conclusion.

12] Learned advocate submitted that the applicant/accused No.5 was a whistleblower. Learned advocate submitted that, if the applicant/accused No.5 had not reported the matter, then the misappropriation of the government money would have gone unabated. Learned advocate submitted that instead of making the whistleblower as a witness in this case, he has been made to face this prosecution. Learned advocate pointed out that 40 bills relied upon by the prosecution as the evidence against the accused, were not signed by accused No.5. Learned advocate pointed out that out 40 bills, 39 bills were submitted without signature by the Subordinate Officers being part of the larger conspiracy. Learned advocate pointed out that the report of the handwriting expert in respect of one bill is against the prosecution. The handwriting expert, in the submission of learned advocate, has opined that the questioned signatures on one bill did not match with the specimen signature of accused No.5. Learned advocate, therefore, submitted that there is no evidence to *prima facie* satisfy that accused No.5

had submitted those bills. Learned advocate pointed out that this aspect has not been taken into consideration. Learned advocate further pointed out that Dr. V.G. Jethwani, who was similarly situated, was granted benefit by Investigating Officer.

13] Learned advocate further submitted that the departmental enquiry was conducted against accused No.5. Learned advocate, relying upon the departmental enquiry report, submitted that on same set of facts and evidence, accused No.5 has been exonerated in the departmental enquiry. Learned advocate pointed out that in the departmental enquiry report, it was stated that timely report of the matter by accused No.5 to his superior has saved the Government from further misappropriation of money. Learned advocate submitted that, therefore, on all these counts, accused No.5 is entitled to be discharged. Learned advocate submitted that the evidence relied upon by the prosecution against him if considered at its face value, would show that it is not sufficient to presume the complicity of accused No.5 in the commission of the crime. In order to substantiate his submission, learned advocate has placed heavy reliance on the decision in the case of *Ashoo Surendranath Tewari Vs. The Deputy Superintendent of Police, EOW, CBI & Anr. [(2020) 9 SCC 36]*

14] Learned Additional Public Prosecutor submitted that the report of the handwriting expert is not a conclusive evidence. Learned Additional Public Prosecutor submitted that the prosecution can adduce evidence and establish that the handwriting expert did not possess expertise to examine the document and give report. Learned Additional Public Prosecutor pointed out that one bill was signed by accused No.5. Learned Additional Public Prosecutor further submitted that, at this stage, appreciation of evidence is not permissible. Learned Additional Public Prosecutor submitted that the material placed on record is sufficient to presume the complicity of accused No.5 in the commission of the crime with the remaining accused. Learned Additional Public Prosecutor further submitted that merely because of the report made by accused No.5 to his superior, he cannot be given a clean chit. As far as the departmental enquiry proceeding and the result of the departmental enquiry proceeding is concerned, learned Additional Public Prosecutor submitted that the Court may appropriately consider the decision relied upon by learned advocate for accused No.5 in the case of ***Ashoo Surendranath Tewari*** (supra). Learned Additional Public Prosecutor, in short, submitted that learned Additional Sessions Judge has not committed any error or mistake. He, therefore,

prayed for dismissal of the revision application.

15] I am conscious of the fact that, at the stage of deciding the discharge application or at the time of framing of charge, threadbare analysis and appreciation of evidence is not permissible. The Court, at the stage of deciding the discharge application, is not supposed to test the pros and cons of the case of the prosecution and the material relied upon by the prosecution. It is settled position that for the limited purpose of deciding the discharge application within the parameters of Section 227 of the Cr.PC, the Court can sift the available material and form an opinion. In order to satisfy myself about the correct factual situation, I have perused the available material. On going through the material, I am satisfied that the case in question is a fit case to discharge accused No.5.

16] Accused No.5, at the relevant time, was working as In-charge Superintendent of Laxmibai Deshmukh Hospital, Murtizapur. In this case, there was misappropriation of Rs.26,90,18,908/- (rupees twenty six crores ninety lakhs eighteen thousand nine hundred eight only). As far as the accused No.5 is concerned, it is the case of the prosecution against him that during his tenure, near about 40 bills were submitted to the treasury and

on the basis of those bills, a sum of Rs.8,09,34,226/- (rupees eight crores nine lakhs thirty four thousand two hundred twenty six only) had been withdrawn and misappropriated. It is undisputed that accused No.5 on 10th November, 2006 made a report to the Deputy Director of Health, Akola and brought to his notice the forgery of bills and misappropriation of money by his subordinates. In his report, he has categorically stated that his signatures were forged by one Mr. A.M. Deshmukh. Accused No.5 on 13th November, 2006 reported the matter to the Superintendent of Police, Akola. He reported to the Superintendent of Police that his subordinates forged the bills and on the basis of the forged bills, withdrawn the money and misappropriated the same.

17] It is not out of place to mention that on the basis of the report made by accused No.5, the Deputy Director of Health had ordered an audit of the account of the hospital. The audit of the hospital revealed serious crime committed by various persons. It is, therefore, apparent that accused No.5 was the whistleblower. It is apparent that, if he had not reported the matter to his superior, then further misappropriation by the remaining accused would have gone unabated. The question is whether this fact can be made

use of by accused No.5 at this stage for the purpose of his discharge. In my view, this fact alone may not be sufficient. However, if it is considered in totality of the facts and circumstances, in my view, it would support the contention of the applicant/accused No.5 and particularly his conduct. It needs to be stated that if he was involved in the misappropriation of money, then he would have hesitated to report the matter to the police. In my view, this is one factor in favour of the accused No.5.

18] It is the case of the prosecution against accused No.5 that when he was In-charge Superintendent of the said hospital, 40 bills were submitted to the treasury and under these 40 bills, a sum of Rs.8,09,34,226/- (rupees eight crores nine lakhs thirty four thousand two hundred twenty six only) was withdrawn. The investigation revealed that 39 bills were not signed by him. The signatures on 39 bills were forged signatures. 39 bills do not bear the signatures of accused No.5. The investigation revealed that out of 40 bills, only one bill was shown to have been signed by accused No.5. Five signatures on the said bill and the specimen signature of accused No.5 were sent to the handwriting expert. The handwriting expert has opined that the questioned signatures namely the signatures on the bills do not match with the specimen

signature of accused No.5. The handwriting expert has further opined that the signatures on M.T.R. 46 were also forged signatures.

19] It is to be noted that as far as the accused No.5 is concerned, there is no iota of evidence in the charge-sheet to suggest that a particular sum was utilised and misappropriated by him. There is no evidence on record to remotely suggest that all these 40 bills were submitted by him. The role of the remaining accused in forging the bills and presentation of those bills in the treasury has been revealed. At the cost of repetition, it needs to be stated that the conspiracy, forgery and misappropriation would not have seen the light of the day, if accused No.5, on being confronted with this misappropriation, had not reported the matter to his superior as well as to the police. The prosecution is heavily banking on the 40 bills. The report of the handwriting expert is not supporting the prosecution.

20] Learned Additional Public Prosecutor, on being confronted with this report of the handwriting expert, submitted that still the prosecution can adduce evidence and prove that the handwriting expert did not possess required expertise to give an opinion as to the questioned and specimen signatures. I am afraid

to accept this submission. Undisputedly, 39 bills were not signed by accused No.5. It is the case of the prosecution that 39 bills were forged by the remaining accused. In my view, if this evidence is considered *prima facie* to decide the fate of accused No.5, it would show that there is no iota of material to establish the complicity of accused No.5 in the commission of the crime. This evidence is not sufficient to presume the complicity of accused No.5 in the commission of the crime. It needs to be stated that in view of the fact that he was whistleblower, the prosecution could have made use of him as a best witness of the prosecution to this episode. In my view, therefore, on the basis of this material, the charge cannot be framed against accused No.5, being the conspirator in the commission of the offence.

21] Learned advocate for accused No.5 has placed on record the enquiry report with the covering letter dated 17th June, 2021. Similarly, he has placed on record the report of the Disciplinary Authority dated 27th May, 2022. These reports are placed on record to make good his submissions that on same set of facts and evidence, the departmental enquiry was conducted and he has been completely exonerated from the charges. The submission is supported on the basis of the reports. Perusal of the report of the

Enquiry Officer would show that the Enquiry Officer has opined that if accused No.5 had not timely reported the matter to his superior, then the State would have suffered heavy loss. In short, the Enquiry Officer has appreciated the conduct of accused No.5. The Disciplinary Authority, by order dated 27th May, 2022, has accepted the report of the departmental enquiry.

22] In the backdrop of the reports of the departmental enquiry, learned advocate for accused No.5 has relied upon a decision in the case of ***Ashoo Surendranath Tewari*** (supra) and submitted that on the basis of the exoneration of accused No.5 in the departmental enquiry, the criminal prosecution on same set of facts and evidence cannot be proceeded against accused No.5. In my view, the ratio laid down in this judgment supports the submissions advanced by learned advocate for accused No.5. Paragraphs 8 to 14 of the decision in the case of ***Ashoo Surendranath Tewari*** (supra) are relevant for the purpose of deciding this case. Paragraphs 8 to 14 are extracted below:

“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, (1996) 9 SCC 1, the question before the Court was

posed as follows:

“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:

“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.”

10. This being the case, the Court then held:

“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the

view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

11. In Radheshyam Kejriwal v. State of West Bengal and Another, (2011) 3 SCC 581, this Court held as follows:

“26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In. B.N. Kashyap [AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (AIR p. 27)

‘... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.’

29. We do not have the slightest hesitation in accepting the broad submission of Mr. Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot be necessarily be held guilty in a criminal trial. Adjudication proceedings

are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.”

12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows:

“38. The ratio which can be culled out from the 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 or proof in criminal cases”

13. 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.”

14. From our point of view, para 38(vii) is important and if the High Court had bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated.”

23] In my view, in this case, the material is not sufficient to presume the complicity of accused No.5 in the commission of the crime. On the basis of the said material and in the teeth of the law laid down in the case of **Ashoo Surendranath Tewari** (supra), accused No.5 has made out a case for his discharge.

24] In the facts and circumstances, the revision application deserves to be allowed. The revision application is **allowed**.

The impugned order dated 1st June, 2018, passed by learned Additional Sessions Judge, Akola below Exh.31 in Special Case No.05 of 2009 is quashed and set aside. The application at Exh.31 is allowed. Applicant/accused No.5 is discharged in Special Case No.05 of 2009 for the offences punishable under Sections 406, 409, 420, 468, 471, 120-B read with Section 34 of the IPC and Sections 7, 13(c), (d) of the P.C. Act.

25] It is seen that due to this revision filed by accused No.5, Special Case No.05 of 2009 remained stayed. There has been no progress in the matter. Considering the enormity of the crime and the fact that the charge-sheet was filed in the year 2009, it would be just and proper to direct the learned Special Judge to dispose of the case expeditiously. Accordingly, the learned Special Judge is directed to dispose of Special Case No.05 of 2009 expeditiously and in any case within one year from today.

(G. A. SANAP, J.)