



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-9107-2010
Reserved on 23.09.2024
Date of decision: 18.10.2024

Nirbhai Singh Dhindsa ...Petitioner

Versus

State of Punjab and another ..Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. S.S. Salar, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

Mr. A.P.S. Mann, Advocate for respondent No.2.
(Through Video Conferencing)

KARAMJIT SINGH, J. (ORAL)

1. This petition under Section 482 Cr.P.C is filed by petitioner/accused seeking quashing of FIR No.48 dated 28.04.2004, under Sections 409, 420 IPC, Police Station Moonak, District Sangrur Annexure P-11.
2. The allegations in nutshell are that in 2004, petitioner was working as a Field Officer at Moonak, in Markfed department. Wheat stock lying at Avtar Singh open plinth and Hargobind Dass open plinth complex were under the care and custody of the petitioner and co-employee Prem Kumar. Physical verification of the stock of Markfed in the area of Moonak was conducted and shortage of 3159 bags of wheat weighting 1579.50 quintals was found at Avtar Singh open plinth. Similarly, shortage of 591 bags of wheat weighing 295.50 quintals was detected at Hargobind Dass



open plinth complex. On the basis of the aforesaid shortage being found in wheat stock during aforesaid physical verification, the complaint was given to the police and consequently, FIR was registered in the present case against the petitioner on the ground that the aforesaid wheat stock was in his custody and he was responsible for the shortage found in the wheat stock.

3. The counsel for the petitioner has inter alia submitted that no doubt, the petitioner was working as a Field Officer at Moonak in Markfed department. The entire family of the petitioner was residing in USA. In the month of March 2004, the son of petitioner met with an accident, on which petitioner applied for earned leave vide Annexure P-1 and the same was allowed by the department for a particular period w.e.f. 09.03.2004. The petitioner left for USA on 18.03.2004 and came back in August 2004. The stock of wheat which was in custody of the petitioner and co-employee Prem Kumar was checked on 29.02.2004 and it was found in order and the concerned report Annexure P-2 was signed by both the custodians namely petitioner and Prem Kumar. Even at the time of fumigation done on 11.03.2004, no shortage was found in the stock. The checking of stock was also conducted on 22.03.2004 and the stock was found intact vide report Annexure P-4 and P-5 which was signed by co-employee Prem Kumar. That even on 31.03.2004, no shortage was found in the wheat stock as per report Annexure P-6 which was also signed by co-employee Prem Kumar. Thereafter, co-employee Prem Kumar gave complaint dated 09.04.2004 wherein he reported that on physical verification of stock in Avtar Singh open plinth, shortage of 3159 bags weighing 1579.50 quintals and shortage of 591 bags weighing 295.50 quintals was found at Hargobind Dass, open



plinth complex. On the basis of the said report, FIR Annexure P-11 was registered against the present petitioner. It has been further contended that at the time when petitioner left India in March 2004, no such shortage was found in the wheat stock which was in the joint custody of petitioner and co-employee Prem Kumar. The alleged shortage in wheat stock was brought to the notice of the department by co-employee Prem Kumar only after the petitioner left for USA. It has been further submitted that the regular departmental inquiry was also conducted with regard to aforesaid shortage of wheat stock against the petitioner and co-employee Prem Kumar. That in the said departmental inquiry, petitioner was exonerated while Prem Kumar was found to be responsible for the aforesaid shortage in wheat stock for year 2003-2004. The copy of the concerned order passed by the Managing Director, Markfed is Annexure R-2. It has been further submitted that petitioner was given clean chit in the departmental proceedings. No gainful purpose is going to be served by keeping pending the criminal proceedings on the basis of same charges which are already faced by the petitioner on the departmental side. In support of his contentions, counsel for the petitioner has placed reliance upon the decision of this Court in ***Nirmal Singh Vs. State of Punjab 2001 (3) RCR (Criminal) 228*** wherein it was observed that accused having been exonerated in the departmental proceedings with regard to same charges, it would hardly be plausible that the petitioner could be convicted in a criminal Court of law where the standard of proof is beyond reasonable doubt. The counsel for the petitioner while referring to another judgment of this Court in ***Gurnam Singh Vs. State of Haryana 1998 (1) RCR (Criminal) 51*** has contended that the



impugned FIR Annexure P-11 deserves to be quashed as no higher proof is available with the prosecution to secure the conviction of the petitioner, as he stands exonerated with regard to same charges in the departmental inquiry.

4. On the other hand, the State counsel has submitted that as per the allegations made in the FIR, petitioner is responsible for huge shortage of wheat stock which was lying in his custody. The FIR was rightly registered under Section 409 and 420 IPC against the petitioner. It has been further submitted that even if the petitioner is exonerated in the departmental proceedings, the petitioner has to face trial in FIR Annexure P-11 in accordance with law. No ground is made out to quash the FIR in question.

5. The counsel for Markfed (respondent No.2) while referring to the short reply filed on behalf of the department submits that petitioner and Prem Kumar faced departmental inquiry with regard to shortage of wheat stock in question and in the departmental proceedings, the petitioner was not held responsible for the shortage and rather Prem Kumar Field Officer was held liable for the shortage of wheat stock. Prem Kumar was held responsible for financial loss to the tune of Rs.15,58,350/- caused to Markfed and consequently, Prem Kumar was down graded by three annual increments.

6. I have considered the submissions made by counsel for the parties.

7. It has been brought to the notice of the Court that co-employee Prem Kumar has died on 19.12.2015.



8. In its written reply, respondent No.2 Markfed, submitted that on the departmental side, Nirbhai Singh Dhindsa, Ex. Field Officer and Prem Kumar, Field Officer were charge-sheeted on 15.09.2004, on account of shortage of wheat stock in question. A departmental inquiry in the matter was held by Narender Singh, IAS (Retd.), who submitted inquiry report wherein it was held that Prem Kumar, Field Officer was solely responsible for the shortage of wheat. The said official had taken advantage of the absence of Nirbhai Singh Dhindsa and made a report of the shortage in wheat stock on 10.04.2004, after the shortage was found by the Committee on 09.04.2004. There was no shortage of stock till Nirbhai Singh Dhindsa took leave from 09.03.2004 to 19.03.2004. While arriving at the said conclusion, the inquiry officer also relied on the admission made by Prem Kumar that there was no shortage in the wheat stock till 31.03.2004.

9. From the perusal of order Annexure P-12 (Annexure R-2) dated 10.11.2009, it appears that the Managing Director Markfed while exonerating the petitioner in departmental proceedings and holding co-employee Prem Kumar responsible for the shortage of wheat stock, made the following observations:-

“Both the charged officials were afforded opportunity of personal hearing on 05.11.2009. Only N.S. Dhindsa ex Field Officer appeared for personal hearing and submitted fresh representation wherein he mainly pleaded that he proceeded on earned leave w.e.f. 09.03.2004 which was duly sanctioned by District Manager, Sangrur. His family got involved in a car accident and he had to rush to USA on 18.03.2004 and he informed District Manager, Sangrur through fax message dated 30.03.2004. He has submitted photocopies of the reports dated 29.02.2004, 11.03.2004, 16.03.2004, 22/23.03.2004, 27.03.2004 and 31.03.2004 sent by Prem Kumar, Field Officer. He has pleaded that the shortage in stock was detected on 09.04.2004 by the District Committee in his absence for which Prem Kumar, Field Officer is solely responsible. However, Prem Kumar, Field Officer neither attended hearing nor any intimation was received from him.

I have gone through inquiry reports, its connected record,



representation submitted by Prem Kumar, Field Officer and averments made by N.S. Dhindsa in person during the course of personal hearing. It has come on record that after the proceeding of leave by N.S. Dhindsa, ex Field Officer, District Manager, Sangrur constituted a committee consisting of Senior Administrative Officer, T.O. and S.B.O. Sangrur for getting charge of wheat stock of B.O., Moonak handed over/taking over of stock, shortage of 3159 bags and 591 bags was detected from the stocks stored in Avtar Singh open complex, Moonak and Khurana Open Complex, Khanauri, since the shortage in the stock occurred after proceeding on leave by N.S. Dhindsa, ex Field Officer, in peculiar circumstances, he cannot be held responsible for the shortage. I agree with the findings of Inquiry Officer Sh. Narender Singh, I.A.S (retired) and do not find N.S. Dhindsa ex Field Officer responsible for the shortages which were occurred in his absence as there was no shortage in the stocks up to 31.03.2004 as submitted by Prem Kumar in his reports sent to the District Office. In these facts and circumstances of the case, the charges leveled against N.S. Dhindsa ex Field Officer vide chargesheet issued under endorsement No.EOI/EA1-1/2004/3039 dated 15.09.2004 are dropped.

So far as the role of Prem Kumar Ex. Field Officer is concerned the shortage in the stocks was detected in his presence and he signed under the head 'handed over' which proves that the stocks were in his charge which he handed over in presence of committee. Thus, he cannot escape responsibility in the shortages in the wheat stocks crop 2003-04 resulted in huge financial loss to the tune of Rs.15,58,350/- to the organization. Accordingly, disagreeing with the findings of Sh. H.S. Sharma, Inquiry Officer and agreeing with the findings of Inquiry Officer of Sh. Narender Singh, Prem Kumar Field Officer is held to be fully responsible for the shortages in the wheat stocks crop 2003-04 which resulted in financial loss to the tune of Rs.15,58,350/- to the organization. As Sh. Prem Kumar is going to retire from service on 30.11.2009, he is downgraded by three annual grade increments at the time of his retirement besides recovery of above financial loss with interest at the bank rate from his all retiral dues and arrears. The balance, if any, is ordered to be recover from him by way of filing arbitration proceedings under Punjab Cooperative Society Act 1961 by District Manager, Markfed, Sangrur."

10. Admittedly, petitioner was exonerated in the departmental proceedings while co-employee Prem Kumar was held responsible for the shortage which was found in the wheat stock as is evident from order dated 10.11.2009 Annexure P-12 passed by Managing Director, Markfed. This fact has not been disputed by the counsel appearing on behalf of respondent No.2-Markfed. After going through order Annexure P-12, it could be easily made out that in the departmental proceedings, the present petitioner was exonerated, after going into the merits of the case.



11. From the perusal of Annexure P-11, it is evident that the said FIR was registered against the petitioner on the basis of aforesaid shortage found in wheat stock in question. As per the reply submitted by respondent No.2 Markfed, later on Prem Kumar was also arrayed as an accused in the criminal case relating to FIR Annexure P-11.

12. The Hon'ble Supreme Court in ***P.S.Rajya Vs. State of Bihar 1996 (9) SCC 1*** held that if the allegation against the delinquent employee in the department proceedings and the criminal case were one and same, the criminal case against delinquent could be brought under any of the categories of cases mentioned in ***State of Haryana Vs. Bhajan Lal 1992 SUPP (1) SCC 335*** for quashing of the proceedings.

13. Further, three Judges Bench of the Hon'ble Apex Court in the case of ***Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Another (2020) 9 SCC 636***, after placing reliance on earlier three Judge Bench, decision in the case of ***Radheshyam Kejriwal Vs. State of West Bengal and Another (2011) 3 SCC 581*** laid down following principles of law pertaining to cases involving simultaneous proceedings of criminal as well as disciplinary nature arising out of same set of facts and circumstances:-

“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.”

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. No doubt, there is one earlier judgment of the Hon’ble Supreme Court in case of ***State (NCT of Delhi) Vs. Ajay Kumar Tyagi (2012) 9 SCC 685*** wherein contrary view was taken by Bench of three Judges of the Hon’ble Supreme Court. However, last of the judgments of the co-ordinate Bench of the Hon’ble Supreme Court of India is the decision in ***Ashoo Surendranath Tewari’s case*** (supra) and therefore, that would prevail. In this regard, reference is made to the decision of Orissa High Court in CRLMC No.3407-2010 titled as ***Dr. Meenaketan Pani Vs. State of Orissa***, decided on 20.05.2022.

15. Now reverting back to the present case, it is established on the record that on the same charges on which the petitioner is facing criminal trial, he has been honorably exonerated in the departmental proceedings. Thus, in the light of the law laid down by Hon’ble Supreme Court in ***Ashoo Surendranath Tewari’s case*** (supra), the continuance of criminal proceedings against the present petitioner on the basis of FIR Annexure P-11 will amount to miscarriage of justice and abuse of the process of Court

and law as well and deserve to be set aside.

16. For the foregoing reasons, the present petition is allowed and FIR No.48 dated 28.04.2004 (Annexure P-11), under Sections 409 and 420 IPC, Police Station Moonak, District Sangrur and all the subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

18.10.2024
YOGESH

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No