



2024:DHC:3142



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22.04.2024

+ **CRL.M.C. 4608/2022 & CRL.M.A. 18684/2022**

RAJAT KUMAR

..... Petitioner

Through: Mr.Abhishek Sharma,
Ms.Sheetal Bhati & Mr.Nikhil
Malhotra, Advs.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Shoaib Haider, APP with
SI Ravi Narwal, PS Moti
Nagar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of FIR No. 235/2014 registered at Police Station: Moti Nagar under Section 409 of the Indian Penal Code, 1860 (in short, 'IPC'), and criminal proceedings emanating therefrom, titled *State v. Rajat*, pending before the Court of learned Metropolitan Magistrate-04, District-West, Tis Hazari Courts, Delhi.



2024:DHC:3142



2. It is the case of the prosecution that on the night of 15.03.2014, at about 11:00 PM, a 9mm Pistol No. 16228573, Butt No. 4106, with 5 live cartridges, was issued to the petitioner, who is working as a constable with the Delhi Police, from the *Maalkhana* of Police Station Moti Nagar, New Delhi. Later, he was contacted many times to deposit the weapon and ammunition in the *Maalkhana* but he failed to do so nor was he able to give a satisfactory reply in this regard. It is further stated that he tried to linger the matter by stating that he would be depositing the same after some time. Efforts for search of the weapon and cartridges were also made, however, it proved futile and no clue regarding the same came to light.

3. As the petitioner failed to deposit the weapon and the cartridges, the present FIR was registered against him.

4. The petitioner, apart from being made an accused in the subject FIR and the consequent trial, also faced a Departmental Inquiry, which resulted in an order dated 16.08.2016 passed by the Disciplinary Authority, comprising of the Additional Deputy Commissioner of Police, West District, *inter alia* observing as under:-

“Keeping in view all the facts and circumstances of the case and hearing them in OR I come to the conclusion that although there is no ill intention on the part of Const. Rajat Kumar, No.3239/W in loss of above said pistol and 5 live cartridges. There is clear negligence and carelessness on his part. Given the overall picture the befitting punishment proportionate to the lapse is forfeiture of two years approved service permanently will meet



2024:DHC:3142



the ends of justice. Therefore, I Sagar Singh Kalsi, IPS, Addl. Dy. Commissioner of Police/West District hereby ordered that two years approved service of Const. Rajat Kumar, No.3239/W (PIS No. 28105447) be forfeited permanently entailing proportionate reduction in his pay with immediate effect. His suspension period from 21.03.2014 to 06.04.2015 is also decided as period not spent on duty for all intents and purposes.....”

5. The learned counsel for the petitioner submits that the Disciplinary Authority having already found that there was no ill intent on part of the petitioner in the loss of the weapon and the cartridges, the further continuation of the prosecution against the petitioner shall be an abuse of process of law. He places reliance on the judgment dated 31.08.2023 of this Court in ***Captain Arvind Kathpalia v. Govt. of NCT of Delhi & Anr.***, CRL.M.C.1626/2023; and in ***Johnson Jacob v. State***, 2022:DHC:2378.

6. On the other hand, the learned APP submits that the observation of the Disciplinary Authority can have no effect on the criminal trial that the petitioner is facing. He submits that trial has to proceed on its own merit, and should not be influenced by the findings of the Disciplinary Authority.

7. I have considered the submissions made by the learned counsels for the parties.

8. In ***Radheshyam Kejriwal v. State of West Bengal***, (2011) 3 SCC 581, which has been reaffirmed in ***Ashoo Surendranath Tewari v. The Deputy Superintendant of Police, EOW, CBI &***



Anr., (2020) 9 SCC 636, the Supreme Court laid down the broad principles of the interplay between the adjudication proceedings and criminal prosecution 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 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.”

9. The said judgment was followed by a learned Single Judge of this Court in **Johnson Jacob** (Supra), observing as under:-

“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).”



10. In *Captain Arvind Kathpalia* (Supra), another learned Single Judge of this Court followed the above ratio and quashed the criminal proceedings.

11. From the above, it is apparent that while there can be no dispute with the proposition that mere exoneration or finding to that effect of the Disciplinary Authority may not have a binding effect on the criminal prosecution, at the same time, in the peculiar facts of the present case, it is noticed that both the proceedings, that is, the criminal proceedings as also that of the Disciplinary Authority are premised on the loss of the weapon and the cartridges by the petitioner. The Disciplinary Authority, on appreciation of evidence, found that the same was accidental and there was no ill/*mala fide* intention on the part of the petitioner in the loss of the same. Section 405 of the IPC defines the criminal breach of trust as under:-

“405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

12. Dishonest intention or wilful conduct on part of the accused is, therefore, a prerequisite to make out a charge of



2024:DHC:3142



criminal breach of trust against a public servant under Section 409 read with Section 405 IPC.

13. In the present case, the Disciplinary Authority has found that there is no dishonest intention on part of the petitioner and he was at best negligent or careless in the loss of the weapon and the cartridges. In my view, therefore, continuation of the criminal proceedings against the petitioner would be against the interest of justice and should be liable to be quashed.

14. Guided by the principles enunciated by the Supreme Court in its judgment *State of Haryana & Ors. v. Bhajan Lal & Ors.* 1992 Supp (1) SCC 335, this Court deems it appropriate, in the interest of justice, to exercise its inherent powers under Section 482 of the Cr.P.C. to quash the FIR and all the proceedings emanating therefrom.

15. Accordingly, the petition is allowed. FIR No. 235/2014 registered at Police Station: Moti Nagar under Section 409 of the IPC, and all consequential proceedings emanating therefrom against the petitioner are quashed.

NAVIN CHAWLA, J

APRIL 22, 2024/rv

Click here to check corrigendum, if any