



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

CRIMINAL APPLICATION (APL) NO.613/2024

1. Anil Raibhanji Sarve,
aged 60 years, Retd. Head Constable, RPF,
Central Railway, R/O, Sai Nagar No.2,
Hudkeshwar Road, Nagpur-440034.

2. Peter Colleghan Alexander Garvin,
aged 60 years, Retd. Inspector, RPF,
R/O, Anant Apartment, Flat No. 5/3,
Plot No. 68, Khare Town, Dharampeth,
Nagpur-440010.

.....APPLICANTS

...V E R S U S...

1. Central Investigation Department,
(Anti-Corruption Bureau), Through,
D.I.G., C.B.I., Nagpur, 23, Telankhedi Road,
Wasurkar Lay out, Civil Lines, Nagpur-440001.

2. Union of India, through, Secretary,
Ministry of Home Affairs, New Delhi- 110001.

3. Nitin Sitaram Meshram,
Samta Nagar, Ward no.4, Wardha-442001 **...NON APPLICANTS**

Mr. B. Lahiri, Advocate for applicants.

Mr. P. K. Sathianathan, Advocate for non applicant No.1.

Mr. P. Navlani, Advocate for non applicant No.2.

Ms S. Jadhao, Advocate for non applicant No.3.

CORAM:- ANIL L. PANSARE AND M. M. NERLIKAR, JJ.

DATED :- 29.07.2025

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

Issue Rule, returnable forthwith. Mr. P. K. Sathianathan,
learned counsel waives service for non applicant No.1, Mr. P. Navlani,
learned counsel waives service for non applicant No.2 and Ms S.Jadhao,

learned counsel waives service for non applicant No.3. With consent of learned counsel for the parties, the application is taken up for final hearing.

2. The applicants have been put to trial under Sections 7 and 13 of the Prevention of Corruption Act, 1988 in Special Case No.3/2016. Argument is that the departmental inquiry was commenced against the applicants for same charges and detailed inquiry was conducted. Various witnesses were examined before the inquiry officer. Opportunity to cross-examine was also given. Witnesses examined in the departmental inquiry are the same which the prosecution intends to examine in the trial. The inquiry officer has considered the evidence and documents in detail and arrived at a finding that the charges against the applicants were not proved. Conclusion in the departmental inquiry reads thus:

“11. CONCLUSION:

After going through the complete Enquiry in the subject Departmental Case, the Examinations and Cross Examinations of the Ps, All the Exhibits and the Final Statements of both the 'Parties Charged' it appears that none of the 'Parties Charged' had expressly demanded the bribe amount of Rs.5000/- as alleged in the complaint of Shri Nitin S Meshram. The story told by both the 'Parties Charged' that the complainant's wife was a Cancer patient and Inspector Peter had therefore compassion for the complainant's family and therefore he gave him Rs.6000/- as a personal loan and that he was repaying the partial loan as Rs.5000/- and promising to pay the remaining Rs.1000/- in the next month may or may not be true. The technical lacuna like unsigned FIR, absence of the

complainant in Post Trap formalities, not turning up of the key prosecution witness the CBI Trap Laying Officer, the Panchas not confirming whether the right hand which was washed after the trap was of Inspector Peter's or otherwise creates so many doubts about acceptance of bribe amount of Rs.5000/- by Inspector Peter. Moreover, there is no demand of bribe of Rs.5000/- from the side of Inspector Peter. When there was no demand there cannot be acceptance too. About Head Constable Anil; Sarve, the second 'Party Charged' has clearly neither demanded nor accepted the bribe amount of Rs.5000/-. The second charge of demanding Rs.3500/- as his share of bribe is also not substantiated.

*The evidences that have come before me during the Departmental Enquiry are not very clear and create lot of doubts. The balance of convenience and the benefit of doubts should go to the 'Parties Charged'. The basic principle of Jurisprudence is **"No innocent person should be punished only on the basis of certain doubts"**. In Department's case of the preponderance of probabilities should be such that a prudent person should feel that the 'Party Charged' must have committed the offence.*

*Therefore, I conclude that both the 'Parties Charged' i.e. IPF shri Peter Garvin and Head Constable Shri Anil Sarve are found **"NOT GUILTY"** of the charges levelled against them in the subject Charge sheet."*

3. As could be seen, the finding that the applicants are not guilty of the charges levelled against them, is based on preponderance of probabilities. There is no dispute that the applicants are being tried for same charges before the Special Judge.

4. Counsel for the applicants has invited our attention to the judgment of the Supreme Court in the case of **Ashoo Surendranath Tewari .VS. The Deputy Superintendent of Police, EOW, CBI & Anr.;**

[(2020) 9 SCC 636]. The Supreme Court has relied upon its earlier judgment in the case of *Radheshyam Kejriwal Vs. State of West Bengal and anr.*; (2011) 3 SCC 581, wherein the Court, after having referred to the various judgments, culled out the ratio in following terms:

“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.”*

5. Thus, the Supreme Court in the year 2011 itself has held that in case of exoneration on merits in adjudication proceedings, where the allegation is found to be not sustainable at all and the person is held innocent, criminal prosecution on the same set of facts and

circumstances cannot be continued. The only requirement is that the allegations in adjudication proceedings as well as proceedings for prosecution is/are identical and the exoneration of the person concerned in the adjudication proceedings is on merits.

6. We find that, in the present case, the allegations against the applicants in the departmental proceedings as well as criminal prosecution are identical. The non applicants have not disputed such status. What non applicant No.1's counsel has done is that he has referred to the judgment of the Supreme Court in the case of *State of NCT Vs. Ajay Kumar Tyagi; [2012 AIR SCW 4815]*, to contend that the exoneration in departmental proceeding ipso facto would not lead to the acquittal of the accused in criminal case.

7. We have gone through the said judgment to find that the judgment passed in *Radheshyam's* case, has been not considered. We have also noticed that the view taken in *Radheshyam's* case has been followed in various other judgments by the Supreme Court, including the judgment which is referred to by the applicants' counsel which is passed in the year 2020. Thus, there are consistent views on this point which run in tune with the law laid down in *Radheshyam's* case.

8. It will be worth mentioning here that the prosecution has examined its first witness in the trial before the Special Judge. The witness is informant. Learned counsel for applicants submits that the

witness has supported theory of the applicants. Counsel for informant is present, who would agree with the said proposition. Thus, the prime witness has not supported the prosecution story.

9. That being so, since the charges levelled against the applicants in departmental proceeding and criminal prosecution are identical and further since the witnesses are the same, the applicants have made out a case for grant of relief. The continuation of prosecution in such a situation, where the final outcome is sealed, would amount to abuse of process of law. Thus, we find no reason why should criminal proceedings be continued.

10. The application is accordingly allowed in terms of prayer clause (a), which reads thus:

“(a) Quash and set aside criminal proceeding lodged against the applicants in the Court of Hon’ble Additinoal Sessions Judge, Wardha in Special Case No.03 of 2016 under FIR No.RC0282015A0010, dated 29.09.2015.”

Rule is made absolute in the above terms.

(M. M. Nerlikar,J.)

(Anil L. Pansare, J.)

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