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

Reserved on: 09.05.2024

Pronounced on: 16.05.2024

+ **CRL.M.C. 450/2017**

SUBHASH SHARMA

..... Petitioner

Through: Mr Salman Hashmi with Mr R. A. Hashmi, Mr. Zeeshan Hashmi and Ms. Sana Hashmi, Advocates.

versus

GOVT OF NCT, DLEHI & ORS.

..... Respondents

Through: Mr. Raj Kumar, APP for State with Insp. Ranvir Singh, PS Anti Corruption Branch

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed seeking quashing of FIR No. 55/2014 dated 11.07.2014 registered at PS ACB, New Delhi under Sections 7/13 of the Prevention of Corruption Act, 1988 against the present petitioner.
2. The case of the prosecution is that News Nation, a TV news channel telecasted a sting operation titled 'Kala Pani' allegedly showing some of the employees of Delhi Prisons interacting with reporters. Some of the employees were shown allegedly accepting bribe money for extending favours to inmates contrary to the Delhi Prisons Rules.
3. A copy of the telecast version in the form of compact disk (CD) was



handed over to a committee of officers constituted to identify the officials who were shown accepting illegal gratification in lieu of the favour to be extended to the prisoners lodged in jail. On the basis of the report given by the said Committee, following 07 officials including the present petitioner were identified:

- (i) Sh. Subhash Sharma, Dy. Suptd. (petitioner herein),
- (ii) Sh. Devender Kumar, Head Warden-471,
- (iii) Ms. Kavita, Matron-1314,
- (iv) Sh. Sudesh Kumar, Driver,
- (v) Sh. Mohit Panwar, Data Entry Operator,
- (vi) Sh. Sushil Kumar, Data Entry Operator,
- (vii) Sh. Deepak Raj, Data Entry Operator,

4. Subsequently, FIR came to be registered under Sections 7/13 of the Prevention of Corruption Act, 1988 and the aforesaid seven accused persons were arraigned as an accused. After completion of investigation, the final report under Section 173 CrPC was filed by the police against the said accused.

5. Later on, disciplinary proceedings were also initiated against the present petitioner under Rule 14 of CCS (CCA) Rules, 1965 vide memorandum dated 08.01.2016 and the petitioner was called upon to submit his written statement of defence to the following articles of charge:

“Article-I

That Shri Subhash Sharma, Dy. Supdt. (Jail), while working in Central Jail-3, Tihar, during the year 2013, committed gross misconduct in as much as he expressed his willingness to extend undue facilities and conveniences to the prisoner (s) in lieu of monetary consideration, in violation of the provisions of Delhi Prisons Act, 2000, Rules framed there



under and Delhi Jail Manual.

By the above acts of omission and commission, the aforesaid Shri Subhash Sharma, Dy. Superintendent (Jail) exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. Servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-II

That Shri Subhash Sharma, Dy. Supdt. (Jail), while functioning in the aforesaid post and during the aforesaid period, committed gross misconduct in as much as he indulged in communication with a person, unauthorisedly, without permission of the Superintendent of Jail, in violation of the provisions of Rule 145 of Delhi Prisons (Inspection, Meetings and Duties of Officers) Rules, 1988.

By the above acts of omission and commission, the aforesaid Shri Subhash Sharma, Dy. Superintendent (Jail) exhibited lack of absolute integrity and devotion to duty, which is unbecoming of a Govt. servant, thereby contravening the provisions of Rule 3 of CCS (Conduct) Rules, 1964.”

[Emphasis supplied]

6. The submission of the learned counsel for the petitioner is that the departmental proceedings eventually culminated into an inquiry report. In the said inquiry report the petitioner was exonerated of both the charges.
7. Insofar as first Article of Charge is concerned the inquiry officer held the same to be “not proved” and the finding of the Enquiry Officer were agreed to by the Disciplinary Authority.
8. However, *qua* the second Article of Charge though the Enquiry Officer recorded his finding that the same is “not proved”, but the disciplinary authority while disagreeing with the said finding of the Enquiry Officer recorded its dissenting note, therefore, the matter was referred to the Union Public Service Commission (in short “UPSC”) for its advice.



9. The UPSC *vide* its detailed advice dated 13.09.2022 after examining the CDs in question observed that it is apparent that the Charged Officer (in short the “CO”) i.e. the petitioner herein has done reasonable rigorous scrutiny of the reporter who was pretending to be an Advocate. It was also observed that there is no video / audio showing demand / acceptance of bribe by the CO.

10. Referring to the testimony of the witness Sh. B.S. Jarial, the then Superintendent, Jail who was examined as PW2 during the departmental proceedings, the UPSC also observed that interacting of the CO (the petitioner herein) with the reporter was part of the functions of the charged official. As per Section 2 of the Delhi Prisons Act, 2000 the CO is a Gazetted Officer, therefore, his actions were in accordance with Rule 61 of the Delhi Jail Manual. Accordingly, the UPSC advised that “...charges are not established against the CO, Shri Subhash Sharma, the proceedings against him may be dropped”. The relevant part of the UPSC’s advice dated 13.09.2022 reads as under:

“4.9. The Commission note that as per the CDs, it is apparent that the CO has done reasonable rigorous scrutiny of the reporter, who was pretending to be an Advocate. When the CO asked the specifics of the prisoner, Identity card of the reporter, the Vakalatnama and ordered for TALASI/Search of the reporter the reporter fumbled and shivered. There is no video/audio showing demanding/accepting bribe by the CO.

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4.14. The Commission further observe that PW-2 Shri B.S. Jarial, the then Superintendent, Central Jail deposed during the inquiry



‘Q.5. Did you notice any exchange, demand or acceptance of any illegal gratification by the official identified as Dy. Supdt. In the verbatim?’

A.5 No.

Q.6. Did you come across any discussion by any other official with the reporters of News Nation which names or incriminates the CO in any manner, while watching or preparing the verbatim?

A.6 The name of the CO never appeared in the discussions by other officials with the reporters.

Q.7. Whether Dy. Supdt, can be termed as subordinate officer?

A.7. As per Delhi Jail Manual, Chapter 13 Delhi Prisons (Inspection, Meetings, and Duties of Officers) Rules, 1988 Dy. Supdt. Is the Chief Executive Officer and also a Gazetted Officer (Para 48, 49, 52, 145), Dy. Supdt. Is required to control the subordinate officers.

Q.8 Whether Dy. Supdt. Is empowered to meet and hear the grievances of the reporter, who posed as an advocate?

A.8 Yes, he is fully empowered and competent.

Q.9 Whether Dy. Supdt. Is required to take the permission of the Supdt. Or any higher authority before interacting with anybody in relation to matters concerning prisoners for redressal of their grievances?

A.9 No.

4.15. The Commission observe that the deposition of the prosecution witness indicate that interacting with the reporter by the CO in his office was part of the functions of the CO.

4.16. The Commission observe that as per section 2 of the Act the CO, a Deputy Superintendent is a gazetted Officer. Therefore not withstanding the provisions of Rule 145 of Delhi Prisons (Inspection, Meeting and Duties of officers) rule, 1988 the actions of the CO as brought out in the charge is in accordance with Rule 61 of the Delhi Jail Manual. In due discharge of the duties of Deputy Superintendent the CO was required to meet various persons on day to day basis in the prison without which the functions assigned to the Deputy



Superintendent(Jail) cannot be performed.

4.17. Accordingly, having regard to the facts of the case, rule position and the deposition of witness, the Commission hold the charge under Article-II as not proved.

5. In the light of the observations and findings as discussed above and after taking into account all other aspects relevant to the case, the Commission conclude that since the charges are not established against the CO, Shri. Subhash Sharma the proceedings against him may be dropped. They advise accordingly.”

[Emphasis supplied]

11. Premised on the advice of the UPSC, an order dated 10.10.2023 came to be passed whereby, after considering the evidence, the facts on record and circumstances of the case, a decision was taken by the Hon'ble President of India by virtue of power vested in him under Rule 9 of the CCS Pensions Rules, 1972 [Now Rule 8 of CCS (Pension) Amendment Rule 2022] to drop the proceedings initiated against the charged officer i.e. the petitioner herein and exonerated him from the charges levelled against him vide memorandum dated 08.01.2016. The relevant part of the order dated 10.10.2023 reads as under:

“2. And whereas, the Charged Officer (CO), Shri Subhash Sharma did not accept the charges vide reply dated 28.01.2016. Therefore, an enquiry was conducted against him under Rule 14 of CCS (CCA) Rules, 1965 and Inquiring Authority & Presenting Officer were appointed.

3. And whereas, Sh. Omkar Singh, DANICS (Retd.) was appointed as the Inquiring Authority vide Order No. F.72(21)/2013/DOV/2602-2606 dated 03.03.2016 and Sh. Prakash Chand, Dy. Superintendent, Central Jail was appointed as the Presenting Officer vide Order No. F.72(21)/2013/DOV/2607-2611 dated 03.03.2016.



4. And whereas, the Inquiring Authority, submitted the inquiry report dt. 23.03.2018 and in his findings, the Inquiring Authority has held both the articles of charge as "Not proved" against the CO. The competent authority in GNCTD agreed with findings with reference to Article of Charge I and disagreed with the findings with reference to Article of Charge II of the Inquiring Authority. A copy of the inquiry report and disagreement note was served upon the CO, vide memorandum No. F.72(21)/2013/DOV /19342-19344 dated 05.12.2018, for his representation.

5. And whereas, the CO submitted his representation dated 05.01.2019 against the Inquiry Report and Disagreement note which was examined by the Competent Authority in GNCTD and was found devoid of merit.

6. And whereas, due to retirement of the CO during the pendency of disciplinary proceedings, the disciplinary proceedings initiated under Rule 14 of CCS (CCA) Rules, 1965 are deemed to have been continued under Rule 9 of CCS (Pension) Rules, 1972 (Now Rule 8 of CCS (Pension) Amendment Rules, 2022).

7. And whereas, the Government of NCT of Delhi forwarded the case, along with the findings/recommendation of the competent disciplinary authority, i.e., Chief Secretary, GNCTD, to the Ministry of Home Affairs, Government of India for passing Presidential Order under Rule 9 of CCS(Pension) Rules, 1972 (Now Rule 8 of CCS (Pension) Amendment Rules,2022).

8. And whereas, the case was examined in the Ministry of Home Affairs, Government of India and then it was referred to Union Public Service Commission for their advice before passing Presidential Order under Rule 9 of CCS (Pension) Rules, 1972 (Now Rule 8 of CCS (Pension) Amendment Rules, 2022).

9. And whereas, the Union Public Service Commission vide letter No.3/332/2021-S.I dated 13.09.2022 has tendered their advice. The Union Public Service Commission has advised that



"... the charges are not established against the CO, Shri Subhash Shanna, the proceedings against him may be dropped. They advise accordingly".

10. And whereas, in terms of Department of Personnel & Training's OM No. 11012/8/2011-Estt.A dated 19.11.2014, a copy of UPSC's aforesaid advice dated 13.09.2022 was furnished to the CO for his representation vide memorandum dated 16.01.2023.

11. And whereas, the CO submitted his representation dt. 14.03.2023 and has submitted that he is in full agreement with the advice of UPSC dated 13.09.2022.

12. And whereas, the case records have been examined and no facts / circumstances have been observed which warrant any interference with the conclusion drawn by the Union Public Service Commission (UPSC) in its advice dt. 13.09.2022.

13. Now therefore, the President, after considering the evidence & facts on record and circumstances of the case, has decided by virtue of power vested under Rule 9 of the CCS (Pension) Rules, 1972 (Now Rule 8 of CCS (Pension) Amendment Rules, 2022) to drop the proceedings initiated against Sh. Subhash Sharma, Dy. Superintendent (Now Retd.), Government of NCT of Delhi and to exonerate him from the charges levelled against him vide memorandum No. F.72(21)/2013/DOV/328 dated 08.01.2016. It is ordered accordingly."

[Emphasis supplied]

12. The learned counsel invites the attention of the Court to read the chargesheet filed by the police under Section 173 CrPC and the first Article of Charge alleged in memorandum dated 08.01.2016 in juxtaposition, to contend that the allegations made therein are identical. The reference was made to the following paragraph of the chargesheet:

"From the Investigation conducted so far it was found that an unauthorized person (News Reporter) entered in Tihar Jail No. 3



*alongwith electronics device and reached in the officer of Dy. Superintendent Sh. Subhash Sharma without any restrictions with the connivance of accused Sh. Devender Kumar, Head Warder-471, Tihar Jail both the **accused namely Sh. Devender and Sh. Subhash Sharma (placed in column No.11) accepted illegal gratification in lieu of favour / facilities to be extended to prisoners lodged in Tihar Jail and thus committed an offence u/s 7/13 POC Act, 1988 r/w 120B/34 IPC. Prosecution sanction u/s 19 POC Act against the accused Sh. Subhash Sharma and Sh. Devender Kumar has already been obtained from competent authority and same are placed on record.***

[Emphasis supplied]

13. He further submits that since the petitioner has already been exonerated of all the charges in the departmental proceedings therefore, the criminal proceedings which are also premised on the identical allegations cannot be sustained, inasmuch as the standard of proof in the departmental proceedings is 'preponderance of probability' whereas in case of criminal proceedings the threshold of proof is higher, the same being 'beyond reasonable doubt'. To buttress his contention, the learned counsel has placed reliance on the decisions of the Hon'ble Supreme Court in *P.S. Rajya Vs. State of Bihar, 1996 (9) SCC 1; Lokesh Kumar Jain Vs. State of Rajasthan (2013) 11 SCC 130* and *Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Anr., (2020) 9 SCC 636*.

14. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

15. The fundamental question which arises in the present petition for the consideration of this Court is that whether the proceedings arising out of FIR No.55/14 which are premised on identical allegations on which disciplinary proceedings were initiated against the present petitioner are liable to be



quashed once the petitioner has been exonerated in the disciplinary proceedings.

16. To appreciate the controversy articulated in the present petition, at the outset it would be imperative to ascertain whether the allegations in the criminal proceedings arising out of FIR No. 55/14 and the disciplinary proceedings are identical. For said purpose apt would it be to examine the allegations in the Chargesheet filed under Section 173 CrPC as well as Memorandum dated 08.01.2016 in juxtaposition, which is as under:

ALLEGATIONS IN THE CHARGE SHEET UNDER SECTION 173 CRPC	ALLEGATIONS IN THE MEMORANDUM DATED 08.01.2016
<i>.....From the Investigation conducted so far it was found that an unauthorized person (News Reporter) entered in Tihar Jail No. 3 alongwith electronics device and reached in the officer of Dy. Superintendent Sh. Subhash Sharma without any restrictions with the connivance of accused Sh. Devender Kumar, Head Warder-471, Tihar Jail both the accused namely Sh. Devender and Sh. Subhash Sharma (placed in column No.11) accepted illegal gratification in lieu of favour / facilities to be extended to prisoners lodged in Tihar Jail and thus committed an offence u/s 7/13 POC Act, 1988 r/w 120B/34 IPC. Prosecution sanction u/s 19 POC Act against the accused</i>	<u>Article-I</u> <i>That Shri Subhash Sharma, Dy. Supdt. (Jail), while working in Central Jail-3, Tihar, during the year 2013, committed gross misconduct in as much as he expressed his willingness to extend undue facilities and conveniences to the prisoner (s) in lieu of monetary consideration, in violation of the provisions of Delhi Prisons Act, 2000, Rules framed there under and Delhi Jail Manual.....</i>



<i>Sh. Subhash Sharma and Sh. Devender Kumar has already been obtained from competent authority and same are placed on record.”</i>	
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17. A comparative reading of the chargesheet under Section 173 CrPC and the charge alleged in Article-I of the Memorandum dated 08.01.2016 whereby disciplinary proceedings were initiated against the petitioner, makes it evident that the allegation contained therein is identical viz., acceptance of illegal gratification/monetary consideration for extending favour/ facilities to the prisoners lodged in Tihar Jail.

18. For the sake of completeness it may be stated that in the departmental proceedings, there was an additional charge contained in Article-II of the Memorandum dated 08.01.2016 viz., the petitioner “*indulged in communication with a person, unauthorisedly without permission of the Superintendent of Jail*”, but the said charge has no relevance for the purpose of deciding the controversy involved in the present case as no allegation analogous to aforesaid Article-II is there in the charge sheet under Section 173 CrPC, though the petitioner was exonerated from the charge in the said Article-II as well.

19. Since it is an admitted position that the petitioner has been exonerated in the disciplinary proceedings, more particularly from the charge contained in Article-I, which is identical to the allegation in the chargesheet under Section 173 CrPC, therefore, the question that needs to be addressed is as to what is the effect of petitioner’s exoneration in the disciplinary proceedings on the criminal proceedings arising out of FIR No.55/2014. However, this question need not detain this Court any longer inasmuch as the same is no



more *res integra*.

20. In ***P.S. Rajya*** (supra), the appellant therein was exonerated of all the charges in the departmental inquiry conducted by the Central Vigilance Commission and the conclusion of exoneration was concurred by the Union Public Service Commission which led to the passing of final orders by the President in favour of the appellant. However, when the appellant moved the High Court under Section 482 CrPC for quashing the cognizance of the charge, the High Court dismissed the petition. The challenge was taken to the Supreme Court. In the given factual backdrop, the Hon'ble Supreme Court formulated the following question in paragraph 3 of the judgment, which reads as under:

“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.”...

21. Then the Hon'ble Supreme Court answered the above formulated question and quashed the criminal proceedings by observing thus:

“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. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in



a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings.....

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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 27-3-1996¹ for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”*

22. In **Lokesh Kumar Jain** (supra), an FIR was registered against the appellant therein alleging financial irregularities and misappropriation of Rs.4,39,617/-. In departmental proceedings with identical charges, the appellant was exonerated on the ground that it was not clear as to who received the payments for various transactions as the original and carbon copies of bills were not available. In the criminal case, the police also made repeated oral requests and statutory notices under Section 91 CrPC but the department of the appellant could not provide the requisite incriminating documents. The police, therefore, submitted the final closure report to the Magistrate after five months of lodging of FIR. But the Magistrate upon submission of the complainant that he is ready to cooperate with the police and procure requisite documents, directed re-investigation under Section

¹Vide order dated 27.03.1996, the Hon'ble Supreme Court allowed the appeal reserving the reasons to be given later, which were given vide judgment in P.S. Rajya (supra)



156(3) CrPC. Thereafter, investigation remained pending for 12-13 years inspite of the appellant making request to the police authorities to complete the investigation. The appellant move the High Court under Section 482 CrPC seeking to quash the FIR lodged against him, but the High Court declined to quash the FIR. The Hon'ble Supreme Court allowed the appeal and quashed the criminal proceedings. Relying upon the decision of **PS Rajya** (supra), it was observed as under:

“23. In P.S. Rajya v. State of Bihar, this Court noticed that the appellant was exonerated in the departmental proceeding in the light of report of the Central Vigilance Commission and concurred by the Union Public Service Commission. The criminal case was pending since long, in spite of the fact that the appellant was exonerated in the departmental proceeding for same charge.

24. Having regard to the aforesaid fact, this Court held that if the charges which are identical could not be established in the departmental proceedings, one wonders what is there further to proceed against the accused in criminal proceedings where standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in the departmental proceedings.

25. Having regard to the factual scenario, noted above, and for the reasons stated below, we are of the opinion that the present case of the appellant is one of the fit cases where the High Court should have exercised its power under Section 482 CrPC. It is not disputed by the respondent that the departmental proceeding was initiated against the appellant with regard to identical charges made in the FIR.....

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28.Considering the fact that delay in the present case is caused by the respondent, the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution is thereby violated and as the appellant has already been exonerated in the departmental proceedings for identical charges, keeping the case pending against the appellant for investigation, is unwarranted, the FIR deserves to be



quashed.”

[Emphasis supplied]

23. In *Radheshyam Kejriwal vs. State of West Bengal and Anr.*,² the question arose that after the exoneration of the appellant in the adjudication proceedings under the provisions of Foreign Exchange Regulation Act, whether criminal prosecution on the same set of facts and circumstances can be allowed to be continued. In this factual backdrop, the Hon’ble Supreme Court observed as under:

“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.”

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38. The ratio which can be culled out from these decisions can broadly be stated as follows:

²(2011) 3 SCC 581



- (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.**

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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.”

[Emphasis supplied]

24. In *Ashoo Surendranath Tewari* (supra) also, the Hon’ble Supreme Court relying upon the report of the Central Vigilance Commission (“CVC”) whereby the CVC refused to give sanction for prosecution of the appellant



opining that *prima facie* charges do not seem to be established against the appellant, observed that chances of conviction in a criminal trial involving the same facts appear to be bleak and accordingly, set aside the judgment of the High Court and that of the Special Judge whereby they had observed that there was no need for sanction under Section 197 CrPC and proceeded against the petitioner. For making such observations the Hon'ble Supreme Court referred to para 38(vii) of *Radheshyam Kejriwal* (supra). The relevant observation of the Court reads thus:

“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.

15. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22-12-2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment [Ashoo Surendranath Tewari v. CBI, 2014 SCC OnLine Bom 5042] of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.”

[Emphasis supplied]

25. At this stage the guidelines laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*, relating to the exercise of inherent power under Section 482 CrPC for quashing an FIR or criminal proceedings emanating therefrom could advantageously be referred to, wherein the Court observed as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above,



we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an



ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

[Emphasis supplied]

26. The legal position that emerges is that if an accused has been exonerated and held innocent in the disciplinary proceedings after the allegations have been found to be unsustainable, then the criminal prosecution premised on the same set of allegations cannot be permitted to continue. The reasoning for this recourse articulated in above decisions is that the standard of proof in criminal cases is ‘beyond reasonable doubt’ which is far higher than ‘preponderance of probability’, the standard of proof required in disciplinary proceedings. In case the lower threshold could not be met in the disciplinary proceeding, there is no purpose in prosecuting the criminal proceedings where the standard of proof required to establish the guilt is higher.

27. The reliability and genuineness of the allegations against the petitioner has already been tested during the disciplinary proceedings and the petitioner has been exonerated of such allegations. As noted above, the findings of the Inquiry Officer, the Disciplinary Authority as well as of the UPSC on the charge contained in Article-I which is identical to the allegations in the criminal case arising out of FIR No.55/2014, are concurrent. In this backdrop the present case can undisputedly be brought under sub-paras (3) read with sub-paras (5) of para 102 of *Bhajan Lal* (supra).

28. Keeping in perspective the above discussion, the present case is a fit case which warrants exercising of inherent powers by this Court under Section 482 CrPC for quashing of FIR and the subsequent criminal proceedings.



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29. Accordingly, the present petition is allowed and consequently, the FIR No.55/2014 dated 11.07.2014 registered at PS ACB, New Delhi under Sections 7/13 of the Prevention of Corruption Act, 1988 alongwith all other proceedings emanating therefrom, is quashed.

30. The petition stands disposed of.

VIKAS MAHAJAN, J

MAY 16, 2024
N.S. ASWAL /dss