

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4420 of 2023

Arising Out of PS. Case No.-54 Year-2010 Thana- VIGILANCE District- Patna

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K. SENTHIL KUMAR S/O SRI KRISHNA MURTI RESIDENT OF - 104,
JAI SHREE COMPLEX, KAVI RAMAN PATH, BORING ROAD,
STATION- BUDDHA COLONY, TOWN AND DISTRICT- PATNA, PIN
CODE 800001

... .. Petitioner/s

Versus

THE VIGILANCE INVESTIGATION BUREAU THROUGH THE
SUPERINTENDENT OF POLICE (VIGILANCE) BIHAR, PATNA Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
Ms. Shweta Anand, Advocate
Ms. Aastha Ananya, Advocate
For the Opposite Party/s : Mr. Arvind Kumar, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 09-11-2023

Heard the learned counsel for the petitioner Mr. Sanjeev
Ranjan and the learned Special P.P. for the Vigilance Mr. Arvind
Kumar.

2. The learned counsel for the petitioner submits that
the issue which arises for consideration in the present case is
whether the criminal proceeding should be allowed to continue,
when the petitioner based on the same allegation was exonerated
in the departmental proceeding. It is next submitted that while it is
a settled position of law that being acquitted in a criminal case will
not debar the employer from subjecting the delinquent employee
to disciplinary proceeding on the same set of charges, but then the



converse of this i.e. a person exonerated in departmental proceeding would automatically be discharged in the criminal proceeding seems unsettled.

3. It is next submitted that while the general illustration/categories of cases for quashing have been previously laid down by the Hon'ble Supreme Court in the case of State of Haryana vs. Bhajanlal 1992 supplementary 1 SCC 335, but then there seems to have an intriguing discord pertaining to whether exoneration in departmental proceeding would lead to discharge of the accused persons concerned from criminal proceeding. The learned counsel next submits that this aspect have been settled by the Hon'ble Supreme Court in various decisions, the only difference being that such decision have not been unanimously laying down the same law, as such there seems to be a diversion of opinion amongst all the Hon'ble High Courts.

4. The learned counsel next submits that it would be apposite to consider the case of P.S. Rajya vs. State of Bihar, 1996 (9) SCC 1, which set the ball rolling for discourse on the issue pertaining to continuance of criminal proceeding when the person concerned was exonerated from the departmental proceeding. This ruling of the Hon'ble Supreme Court became the focal point of



discussion for its finding in the following paragraph of the judgment:-

“Para-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.”

5. It is further submitted that while P.S. Rajya (supra) has reiterated categories of cases by way of illustrations, wherein power could be exercised for quashing criminal prosecution, but it was primarily laid down for the first time in the case of Bhajan Lal (supra). It is next submitted that since in P.S. Rajya (supra) a new issue had arisen i.e. whether exoneration in the departmental



proceeding would lead to discharge from criminal proceeding, the said issue was again considered by the Hon'ble Supreme Court in the case of State through S.P.E. & CBI, Andhra Pradesh vs. M. Krishna Mohan & Anr., (2007) 14 SCC 667, wherein the Hon'ble Supreme Court held:-

“32. Mr. Nageshwar Rao relied upon a decision of this Court in P.S. Rajya v. State of Bihar [(1996) 9 SCC 1]. The fact situation obtaining therein was absolutely different. In that case, in the vigilance report, the delinquent officer was shown to be innocent. It was at that juncture, an application for quashing of the proceedings was filed before the High Court under Section 482 of the Code of Criminal Procedure which was allowed relying on State of Haryana v. Bhajan Lal [1992 Supp.(1) SCC 335], holding:

"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."

"33. The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding *ipso facto* would lead to a judgment of acquittal in a criminal trial."

6. The learned counsel next submits that the Hon'ble Supreme Court in the case of M. Krishna (*supra*) endeavoured to resolve the issue by stating that P.S. Rajya (*supra*) had quashed the F.I.R./charge sheet based on the merits of the case, as such, it was not an authority on the issue that exoneration in the departmental proceeding would automatically lead to a judgment of acquittal in a criminal trial. The learned counsel next submits that the issue again came for consideration in the case of Radheshyam Kejriwal vs. State of W.B., 2011 (3) SCC 581, wherein the Hon'ble Supreme Court apart from going into the question of F.I.R./charge sheet also dealt with other intriguing aspect i.e. whether the finding in a civil proceeding would be final and binding on a criminal court, whether exoneration in a departmental proceeding would create a bar on initiating criminal proceeding in view of Article 20 (2) of the Constitution of India and Section 300 of the



Cr.P.C., 1973. It is submitted that the Hon'ble Supreme Court while dealing with the aforesaid issue held 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.”



7. The learned counsel next submits that the Hon'ble Supreme Court held that if exoneration in departmental proceeding was on merits or on identical allegation then the criminal prosecution on the same facts and circumstances cannot be allowed to continue, with the underlying principles that when the departmental proceedings are based on preponderance of probability, criminal proceedings are based on higher standard of proof i.e. proof beyond reasonable doubts and as such if charges have not been proved in the departmental proceeding, the chances of such allegation being proved in criminal proceeding is bleak.

8. The learned counsel for the petitioner at this stage draws the attention of the judgment of the Hon'ble Supreme Court in the case of State (NCT of Delhi) vs. Ajay Kumar Tyagi, 2012 (9) SCC 685, on which, heavy reliance is being placed by the learned counsel appearing for the Vigilance also. The learned counsel submits that in Ajay Kumar Tyagi's case, the Hon'ble Supreme Court came to a finding that finding of departmental authority of exoneration would not be considered for quashing of criminal proceeding for they are held by two different authorities. It is next submitted that the Hon'ble Supreme Court in the case of Ajay Kumar Tyagi (supra) had considered P.S. Rajya (supra), and thereafter, came to a definite conclusion that exoneration in



departmental proceeding would *ipso facto* not lead to quashing of a criminal proceeding. The learned Special P.P., Vigilance harps on the said finding of the Hon'ble Supreme Court in the case of Ajay Kumar Tyagi's case but the learned counsel for the petitioner then again draws the attention of the Court to submit that Radheshyam Kejriwal's case (supra) was not considered by the Hon'ble Supreme Court, while deciding Ajay Kumar Tyagi's case, as such, it can be safely argued and submitted that Ajay Kumar Tyagi's case was *per incuriam*.

9. The learned counsel for the petitioner next submits that the Hon'ble Supreme Court in the case of Ashoo Surendranath Tiwary vs. CBI, 2020 (9) SCC 636 considered the law laid down in P.S. Rajya (supra) and Radheshyam Kejriwal case (supra) and allowed quashing of F.I.R./charge sheet since the accused persons were exonerated in the departmental proceeding on merits on identical allegation.

10. The learned counsel for the petitioner thus submits that in view of the submissions recorded hereinabove, one thing which become clear is that there is no unanimity in the decision of the Hon'ble Supreme Court with regard to the fact as to whether a criminal proceeding be quashed in view of the exoneration of the delinquent in a departmental proceeding but then the line of cases



cited as recorded hereinabove, it would manifest that the latest view of the Hon'ble Supreme court in the case of Ashoo Surendranath Tewari (supra) relying on Radheshyam Kejriwal case (supra) is that in the event if a delinquent is exonerated on merits in a departmental proceeding in that event the criminal proceeding should not be allowed to continue. The learned counsel thus submits that keeping this background in mind the controversy involved in the present case be appreciated. The learned counsel next submits that in the present case also the petitioner who is an I.A.S. Officer was proceeded departmentally and he was exonerated in the departmental proceeding and based on the same set of allegations the F.I.R. also came to be instituted in which cognizance has been taken which is impugned in the present proceeding.

11. The learned counsel next submits that the informant (Dy. S.P., Vigilance) alleges that the petitioner was posted as the Municipal Commissioner in between 20.02.2009 to 23.02.2010, the petitioner is alleged to have passed orders in 130 plan cases connected with multi-storied building granting statutory approval/revision of maps in exercise of his quasi judicial power by imposing condonation fee and failed to impose five times fine over the condonation in terms of executive order contained in



Order No.96/2007 dated 18.09.2007 issued by his predecessor and thus the act of the petitioner has caused loss of revenue to the tune of Rs. 7,46,66,669/-.

12. It is next alleged that despite carrying out the exercise for reassessment of holding tax, the petitioner kept the fine on hold in a pre-planned manner so that no order would be passed with a view to confer benefit to the hotel lobby and thereby causing revenue loss to the tune of Rs.64,41,225/- to the Municipality, it is further alleged with regard to allotment of hoarding in the municipal area by fixing a lesser rate, causing revenue loss of Rs. 40,38,133/- to the Municipality. It is next alleged that Municipality suffered wasteful expenditure of Rs.18.09 lakhs on account of two way communication system, further alleges that there were irregularity in purchase of portable diesel pump, it is further alleged that the petitioner cancelled the contract for creation of slaughter house on account of non-execution of work, which shows that the allotment of work was vitiated by corruption and favoritism, it is next alleged that allotment of work for solid waste management and disposal was illegally allotted to A to Z Infrastructure Pvt. Ltd. It is further alleged that four air conditioners were installed in the office of the Corporation for an amount of Rs.1,19,560/-. It is alleged that the



petitioner enhanced the salary of the employees by removing the anomaly in their existing pay scale based on the recommendation of pay fixation committee, it is further alleged that petitioner despite being transferred on 23.02.2010 continued to discharge the function of the Municipal Commissioner till 24.02.2010, finally alleges that petitioner gave promotion to four employees illegally. Thus the act of omission and commission of the petitioner as the Municipal Commissioner caused loss to the Municipality of Rs.8,76,81,110/-. Accordingly, the F.I.R. was instituted.

13. The learned counsel for the petitioner submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that altogether 11 allegations have been levelled against the petitioner, out of which, first four allegations pertain to causing loss of revenue to the Municipality and rest of the allegations are in nature of decision taken in administrative capacity, it is also submitted that the allegation does not even remotely suggest that petitioner by committing an act of omission and commission amassed money illegally. The learned counsel next submits that the Vigilance investigated the case in a mechanical manner. It is next submitted that it absolutely does not stand to reason that how the Vigilance could have investigated such allegations which were decision taken more in administrative



capacity and had nothing to do with any fiscal or financial transaction. The learned counsel next submits that the Vigilance investigated the case in a mechanical manner submitted charge sheet dated 27.07.2012 under Sections 467, 468, 420, 409, 477(A), 477, 120B and 201 of the IPC read with Sections 7, 8, 13(2), 13(1) (c) (d) of P.C. Act, 1988 along with Sections 4, 5, 11, 12 and 13 of the Bihar Prevention of Specified Corrupt Practices Act. It is next submitted based on the charge sheet, cognizance came to be taken by an order dated 28.07.2012, which is impugned in the present quashing application.

14. The learned counsel for the petitioner next submits that based on the same allegation in the FIR a departmental proceeding was also initiated against the petitioner in which charge memo was issued on 27.06.2012 and thereafter the departmental proceeding commenced. Learned counsel submits that before making submissions on the merits of the departmental proceeding it would be apt to submit herein that the gist of allegation pertaining to causing of revenue loss of Rs.7,46,66,669/- is in respect of quasi judicial orders pertaining to 130 plan cases with respect to multi storied building in his capacity as the Municipal Commissioner, it is alleged that petitioner only imposed condonation fee in terms of the rules and by-laws of the



Corporation but failed to impose fine five times the condonation fee in terms of the Executive Order No. 96 of 2007, dated 18.09.2007 (Annexure-3 to the quashing application) issued by his predecessor Municipal Commissioner, Patna Municipal Corporation and this non-imposition of fine has caused revenue loss of Rs.7,46,66,669/-. It is next submitted that the empowered Standing Committee of the Patna Municipal Corporation in its meeting dated 26.08.2008 had passed a resolution no. 222 (Annexure-5 to the quashing application), whereby the said Executive Order No. 96 of 2007, dated 18.09.2007 imposing five times fine over the compounding fee was not to be imposed on old building maps approved earlier for which there were deviation within approved limits and it was applied to new buildings only.

15. Learned counsel next submits that the petitioner joined as the Municipal Commissioner, Patna Municipal Corporation on 20.02.2009 as such prior to his joining the Empowered Standing Committee of the Patna Municipal Corporation had already taken a decision vide its resolution no. 222, dated 26.08.2008 not to impose five times fine over the compounding fee rather the said fine now was to be imposed only with respect to the new buildings which had deviation.



16. Learned counsel next submits that in pursuance of the departmental proceeding initiated against the petitioner as recorded hereinabove the inquiry officer submitted his report dated 20.02.2018 (Annexure-OP-A internal page 88 of the counter affidavit). Learned counsel next submits that from perusal of the inquiry report dated 20.02.2018, it would manifest that the inquiry officer records that the petitioner stands exonerated of the charge no. 3, 4, 5, 6, 7, 8 and 9 whereas the charge no. 1 and 2 are partially approved.

17. The learned counsel for the petitioner draws the attention of the Court to page 113 of the counter affidavit filed on behalf of the Vigilance to submit that with regard to charge no.1 and 2, the inquiry officer has recorded that neither building by-laws of the corporation had any provision for imposing fine five times of compounding fee on sanctioned plan where it needed to be condoned rather the said provision was made by the Empowered Standing Committee of the Corporation but the said provision was later modified i.e. before joining of the petitioner as the Municipal Commissioner. Thus, not imposing five times fine on the compounding fee was not an improper act on behalf of the petitioner but then the departmental authorities have brought to the notice of the Inquiry Officer sanctioned plan being Plan



Case No. 144/20065, 193/2009 and 46/1997 in which the petitioner had imposed five times fine on the compounding fee when there was no provision for imposing five times fine on the compounding fee, further even the delinquent has not rebutted the allegation of the authorities regarding imposition of five times fine of the condonation fine with respect to the aforesaid three plan cases. Thus, based on said reasoning the inquiry officer found the charge no.1 and 2 partially proved.

18. The learned counsel for the petitioner submits that findings of the Inquiry Officer attains finality only after it is accepted by the Disciplinary Authority as the disciplinary authority can accept the inquiry report, differ with the inquiry report and can reject the inquiry report and direct for de novo inquiry. It is further submitted that though the Inquiry Officer in his inquiry report recorded that charge no.1 and 2 were found partially proved but then the same was not accepted by the disciplinary authority.

19. The learned counsel for the petitioner next submits that the petitioner thereafter was exonerated in the departmental proceeding by an order dated 14.09.2023, the learned counsel for the petitioner further submits that what is not disputed rather stands admitted is that when the petitioner joined Patna Municipal Corporation as its Municipal Commissioner on 20.02.2009 by that



time the Empowered Standing Committee had already issued direction dated 26.08.2008, whereby no five times fine was to be imposed on planned cases prior to that date and all the 130 planned cases were those plan cases which were prior to 26.08.2008, as such, the petitioner in terms of the modified instruction of the Empowered Standing Committee dated 26.08.2008 could not have imposed fine at the time of condonation, it is next submitted that if the petitioner imposed five times fine in three cases that amply demonstrates that it was not his intention to defraud the Municipality of its revenue and since the Empowered Standing Committee had already taken a decision not to impose five times fine on plan cases, prior to his joining as such by imposing five times fine on 3 plan cases at best it can be construed that the petitioner committed administrative lapses to which no criminal colour can be given.

20. The learned Special P.P. Sri Arvind Kumar tries to rebut the submissions of the learned counsel for the petitioner by relying on the case of Radheshyam Kejriwal (supra) and draw the attention of the Court again at para-38 and submits that sub-clause (6) records the finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of the finding, if the exoneration in adjudication proceeding



is on technical ground and not on merit, the prosecution will continue. The learned Special P.P. then submits that exoneration of the petitioner in case was on a technical ground i.e. lack of evidence. The learned counsel for the petitioner rebuts the submission of the learned Special P.P. and submits that in the departmental proceeding all the documentary evidence were produced and it was the duty of the prosecution to produce all the documentary evidence before the Inquiry Officer and the Inquiry officer exonerated the petitioner of all the charges but on preponderance of probability held the charge no.1 and 2 partially proved which was not accepted by the disciplinary authority. The learned Special P.P. then submits that in the F.I.R. there were 11 allegations but the departmental proceeding against the petitioner was only with respect to nine allegation on which the learned counsel for the petitioner rebuts the submission and submits that the two allegation for which departmental proceeding was not initiated by the department were that the petitioner despite being transferred on 23.02.2010, continued to discharge his duty till 24.02.2010 and that petitioner gave promotion to four employees illegally, it is submitted that these two charges for which no departmental proceeding was initiated by no stretch of imagination



it can even be remotely suggested that they had any criminal colour as the allegations were more administrative in nature.

21. After considering the submissions made by the learned counsel for the petitioner and taking into consideration the case laws as recorded hereinabove and the fact that petitioner stands exonerated in the departmental proceeding by the disciplinary authority as such the order dated 28.07.2012 passed in Special Case No. 36 of 2010 arising out of Vigilance P.S. Case No. 54 of 2010 by the learned In-charge Special Judge, Vigilance-I, Patna whereby cognizance of the offences under Sections 467, 468, 420, 406, 409, 477(A), 477 and 120(B) of the Indian Penal Code read with Sections 7, 8, 13(2) and Sections 31(c)(d) of the Prevention of Corruption Act, 1988 read with Sections 5, 11, 12 and 13 of the Bihar Prevention of Specified Corrupt Practices Act, 1983 has been taken, is hereby quashed.

22. Accordingly, this application stands allowed.

(Satyavrat Verma, J)

Amit/Kundan

AFR/NAFR	AFR
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