

E. Nagachandran vs Sh. D.K. Sharma on 28 February, 2017

IN THE COURT OF SH. REETESH SINGH, ASJ-02/FTC
NEW DELHI DISTRICT PATIALA HOUSE COURTS, DELHI

Crl. Revision No. 26 of 2017
Filing No. 8467 of 2016

E. Nagachandran
Son of Shri P. Easwaran
Deputy Director
Ministry of Corporate Affairs
Resident of C-305, Pragati Vihar
New Delhi-110003.

.....Petitioner

Versus

1. Sh. D.K. Sharma
Under-Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Sansad Marg,
New Delhi-1.
 2. Sh. T.S. Jawahar
Formerly Director (ISS Section)
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Sansad Marg,
New Delhi-1.
Present address
Senior Deputy Director General (Administration),
Indian Council of Medical Research,
Post Box No. 4911, Ansari Nagar,
New Delhi-29.
 3. Sh. Arvind Kumar
Formerly Joint Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Sansad Marg,
New Delhi-1.
Present Address
DIR:ER 1981
- E. Nagachandran vs. D.K. Sharma & Ors
CR No. 26 of 2017
ED E (N), Railway Board, New Delhi.
4. Dr. T.C.A. Anant
Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Sansad Marg,
New Delhi-1.

1/14

..... Respondents

Date of institution of the case	:	25.03.2015
Date of receiving of case by transfer	:	13.01.2017
Date of reservation of order	:	09.02.2017
Date of announcement of order	:	28.02.2017

ORDER

1. This revision petition has been filed against the impugned order dated 19.01.2015 by which the Ld. Trial Court declined to take cognizance of the offences alleged in the complaint of the petitioner in the absence of any sanction of the competent authority under section 197 of the Code of Criminal Procedure (Cr.P.C) for their prosecution .

2. The petitioner E Nagachandran has chosen to address arguments on his revision petition in person. He has submitted that the Ld. Trial Court failed to appreciate that no sanction for their prosecution was required in view of the offences which had been committed by them. He submitted that the acts committed by the respondents were not part of their official duties and that under law, only acts done by public servant in good faith are afforded protection under section 197 of Cr.P.C. He submitted that there is was protection available to any public servant for acts which are malicious in nature. He submitted that had the act complained of not been done, it would not have exposed them to any charge of dereliction of duty. He submitted that the respondents no. E. Nagachandran vs. D.K. Sharma & Ors 1 to 4 are the Cadre Controlling Authority of the petitioner.

3. The petitioner submitted that in the year 2008 he was posted in the office of NSSO, Hyderabad and was suspended on 04.08.2009 in pursuance of malicious acts committed by the respondents. The respondents conspired together to prepare a false note for taking first stage advise of the Central Vigilance Commission (CVC) and after the advise was received, the petitioner was charge sheeted on the basis of another office note containing false facts which was put up before the Minister concerned. He submitted that these acts being malicious in nature did not require any sanction for their prosecution. In support of his oral arguments, the petitioner filed written submissions in which he reiterated his contentions made in the revision petition. The petitioner has relied on the following case law in his support :-

i) Anil Kumar v. M. K. Aiyappa, (2013) 10 SCC 705

ii) Satnam Singh v. Union of India

iii) B. Saha v. M. S. Kochhar, AIR 1979 SC 1841 :

(1979) 4 SCC 177

iv) Bhaskar Lal Sharma v. Monica, (2014) 3 SCC 383 : 2014 (2) SCR 990

v) Dr. Subramanian Swamy v. Dr. Manmohan Singh, AIR 2012 SC 1185

- vi) Kanumukkala Krishna Murthy v. State of Andhra Pradesh, AIR 1965 SC 333
- vii) Union of India v. B. V. Gopinath, (2014) 1 SCC 351
- viii) General Officer Commanding v. Central Bureau of Investigation, (2012) 6 SCC 228
- ix) Matajog Dobey v. H. C. Bhari, AIR 1956 SC 44, State of H. P. v. M. P. Gupta, AIR 2004 SC 730 : 2003 (6) Suppl. SCR 541 : 2004 (2) SCC 349. Even in P. K. Pradhan v. State of Sikkim, AIR 2001 SC 2547 : (2001) 6 SCC 704, the Hon'ble Supreme Court E. Nagachandran vs. D.K. Sharma & Ors
- x) Cf. Bakshish Singh Brar v. Gurmej Kaur, AIR 1988 SC 257 : 1988 (1) SCR 450 : 1987 (4) SCC 663, Ashok Sahu v. Gokul Saikia, 1990 Supp SCC 41). General Officer Commanding vs. CBI, (2012) 6 SCC 228
- xi) M/s. Poothundu Plantations Private Ltd. v. Agricultural Income Tax Officer, AIR 1996 SC 3427
- xii) State of Orissa v. Debendra Nath Padhi, AIR 2005 SC 359 : (2005) 1 SCC 568
- xiii) Satish Mehra v. Delhi Administration, (1996) 9 SCC 766 (Judgment no.11, at pages 89-94)
- xiv) Urmila Devi v. Yudhvair Singh, (2013) 15 SCC 624
- xv) Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411 : AIR 1998 SC 2595 and Lalu Prasad v. State of Bihar, (2007) 1 SCC 49 : AIR 2007 xvi) Dr. Subramanian Swamy v. Dr. Manmohan Singh, AIR 2012 SC 1185 xvii) Harihar Prasad v. State of Bihar, (1972) 3 SCC 89 xviii) Sambhoo Nath Mishra v. State of Uttar Pradesh, AIR 1997 SC 2102 xix) State of Kerala v. Padmanabhan Nair, (1999) 5 SCC xx) State of Himachal Pradesh v. M. P. Gupta, AIR 2004 SC 730 : (2004) 2 SCC 349 xxi) Choudhary Parveen Sultana v. State of West Bengal, AIR 2009 SC 1404 Bakshish Singh Brar v. Gurmej Kaur, AIR 1988 SC 257 : 1988 (1) SCR 450 xxii) Ashok Sahu v. Gokul Saikia, 1990 xxiii) Inspector of Police v. Battenapatla Venkata Ratnam, AIR 2015 SC 2403 xxiv) General Officer Commanding v. CBI, (2012) 6 SCC 228, Prakash Singh Badal v. State of Punjab, AIR 2007 SC 1274 and State of Kerala v. Padmanabhan Nair, AIR 1999 SC 2405 xxv) Mahesh Chand v. B. Janardhan Reddy, AIR 2003 SC 702
- 4. On the other hand, learned counsel for the respondents argued that the learned Trial Court rightly declined cognizance as the E. Nagachandran vs. D.K. Sharma & Ors bar under section 197 of the Cr.P.C. protected the respondents from such

frivolous prosecution. He submitted that the petitioner is facing numerous disciplinary proceedings on account of the misdemeanours committed by him. The petitioner is only trying to pressurize the respondents by trying multiple times to implicate them in false cases. He submitted that previously the petitioner had filed another complaint on the same set of facts against TS Jawahar (respondent no.2 herein) which had been rejected by the Ld. MM by order dated 24.01.2014.

Criminal Revision no.22/2014 preferred by the petitioner against the said order was also dismissed by the Court of Sh. Bharat Parashar, ASJ-01, NDD, PHC, vide order dated 01.07.2014. In the said order the Ld. ASJ held that no offence whatsoever was made out against the proposed accused. It was submitted that the said order has not been challenged by the petitioner before any higher forum and has attained finality. In order to overcome the said finding, the petitioner has filed the present complaint with certain additional facts which are cosmetic and not of any substance. He submitted that the complaint of the petitioner is nothing but malafide in nature and is a gross misuse of the process of the Court. The Ld. Counsel for the respondents placed on record a copy of the order dated 01.07.2014 passed in Criminal Revision no.22/2014 by the Court of Sh. Bharat Parashar, ASJ-01, NDD, PHC.

5. In rejoinder, the petitioner did not deny having previously filed a complaint against TS Jawahar as well as the order dated 01.07.2014 passed in Criminal Revision no.22/2014 by the Court of Sh. Bharat Parashar, ASJ-01, NDD, PHC. He stated that he was now going to challenge the said order before a higher forum. He further submitted E. Nagachandran vs. D.K. Sharma & Ors that the said proceedings were only against T. S. Jawahar (respondent no. 2 herein) whereas the present proceedings are against three additional accused. He also submitted that the acts alleged in the present complaint took place after the acts alleged in the previous complaint had already taken place.

6. I have heard the petitioner in person and the Ld. Counsel for the respondents. I have gone through the written submissions filed by the petitioner and also the Trial Court record.

7. In his complaint under section 200 of the Cr.P.C., the petitioner has claimed that he is a member of Indian Statistical Services Group-A under the Central Government. The complaint arose out of a note dt.17.3.2011 prepared by the respondent no.1 D.K. Sharma in his capacity as Under-Secretary, Government of India. The said note is annexed as annexure-1 to the complaint.

8. The note of the respondent no.1 records that the petitioner was placed under suspension on 04.08.2009 after approval of the Disciplinary Authority and his suspension was revoked on 13.08.2010. A draft charge-sheet specifying imputation of misconduct qua the petitioner was prepared and sent for first stage advice of the CVC in July, 2010. CVC sought clarifications which were given. The note also records as per clarifications, slight modification was made to the draft charge-sheet with the approval of the Secretary and sent for the advice of the CVC. The CVC vide its communication dated 14.03.2011 E. Nagachandran vs. D.K. Sharma & Ors conveyed its agreement and advised initiation of major penalty proceedings against the petitioner. This note was put up for approval before the Minister (S&PI).

9. The petitioner in his revision petition has submitted that he was placed under suspension on 04.08.2009 on the approval of the Minister obtained by fraud. He challenged his suspension before the Central Administrative Tribunal (CAT) Principal Bench New Delhi vide OA No.1488/2010 and his suspension was revoked on 13.08.2010 after which his petition was disposed off by the CAT on 25.10.2010 with the direction to issue charge-sheet to the petitioner within four weeks. The said four weeks ended on 24.11.2010. During the pendency of the petition before CAT, the Ministry approached CVC for first stage advice. CVC sought clarifications vide its letter dated 19.10.2010. The Ministry forwarded the information vide letter dated 06.12.2010. The Ministry moved an application MA No.3276/2010 on 21.12.2010 before the CAT for extension of time to comply with the order dt.25.10.2010 for charge- sheeting the petitioner. The CAT issued notice on the said application to the petitioner. The petitioner claimed that the Ministry made a false statement before the CAT on the basis of which notice was issued i.e. the certified copy of the order dt.25.10.2010 had been received by them on 08.12.2010. The petitioner has stated that he has filed an application under section 340 of the Cr.P.C. before the CAT in this regard. He contended that further clarifications were given by the Ministry to the CVC vide letter dated 24.01.2011. The respondent no.2 forwarded some information to CVC vide letter dated 09.02.2011. In the meanwhile, the CAT disposed of the application of the Ministry for extension of time as E. Nagachandran vs. D.K. Sharma & Ors infructuous. In para no.12, the petitioner has stated as under:-

"12. That having once communicated that the first stage advice was sought from the Central Vigilance Commission by referring to the judgment dated 25.10.2010 in OA No. 1488 of 2010 in his OM dated 09.02.2011 (Annexure-14), it was the duty of the respondent / accused no.2 to communicate the facts of filing of said MA No. 3276 of 2010 in OA No. 1488 of 2010 and its disposition soon after 24.02.2011, which he failed to do. As the deponent in the said MA No. 3275 of 2010 in OA No. 1488 of 2010, it was the duty of respondent / accused no.1 to inform all the other respondents / accused nos. 2, 3 and 4 of the developments in MA No. 3276 of 2010 in OA No. 1488 of 2010 with the request to halt the exercise of securing first stage advice against the complainant, as it was precisely on the statement that the process for first stage advice was in progress that the extension of time was sought. However, he also failed to do so."

10. The petitioner has thereafter contended that due to the suppression of facts before the CAT, the CVC tendered his first stage advice vide communication dated 14.03.2011. The respondents were functionaries at the relevant period dealing with the service matters of the Indian Statistical Services. It is further alleged that after receipt of advice of CVC, the respondent no.1 put up a note on 17.03.2011 seeking approval of the Minister for issuing charge-sheet to the petitioner. The respondents no.2, 3 and 4 agreed to the note without making any observations. On the basis of misleading note, the Minister granted his approval for charge-sheeting the petitioner. The petitioner contended that in this manner, the respondents committed the offences in the following manner as described by the petitioner in para no.18:-

"18. That the offences committed by the respondents / E. Nagachandran vs. D.K. Sharma & Ors accused persons, being the four officers responsible, at the relevant

period of time, for dealing with the service matters of the Complainant are grouped into four categories:-

I. Sections 120-A and 120-B of the Indian Penal Code: Conspiracy to disobey the consequences of the judicial order dated 25.10.2010 in OA No. 1488 of 2010 and the judicial order dated 24.02.2011 in MA No. 3276 of 2010 in OA No. 1488 of 2010 of the Hon'ble Central Administrative Tribunal and conspiracy to commit offence under Sections 166, 167, 177, 182, 218 and 418 of the Indian Penal Code, 1860.

II. Sections 166, 167 and 218 of the Indian Penal Code: Disobedience to the direction of law as to the manner in which the Respondents / Accused persons were to conduct themselves and Creating a Writing or public record in an incorrect manner with intention to cause annoyance / injury to another person (complainant herein);

III. Sections 177 and 182 of the Indian Penal Code: Misleading another public servant (the Hon'ble Minister) to act against direction of law, to do certain thing which he would not do, had the truth been known to him.

IV. Sections 415 and 418 of the Indian Penal Code: Cheating, by deceiving another person to do certain thing which he would not do had the truth been known to him and causing loss to the reputation of the person so deceived (Government of India, represented by Hon'ble Minister) and in the process of cheating, hurting the interests of a person (the complainant) whose interest the offender (s) is / are bound by law to protect."

11. The grievance of the petitioner against the respondents is that the CAT in OA No.1488/2010 vide its order dt.25.10.2010 had while disposing off the said petition directed the Ministry to issue charge sheet to the petitioner within four weeks which expired on 24.11.2010. Despite E. Nagachandran vs. D.K. Sharma & Ors expiry of the said period the Ministry proceeded with seeking first stage advice with the CVC. The Ministry then moved an application MA No.3276/2010 on 21.12.2010 before the CAT for extension of time to comply with the order dt.25.10.2010. As per the petitioner the respondents ought to have halted the proceedings with the CVC but still went ahead without intimating the CVC or the CAT which resulted in the CVC tendering its approval to the draft chargesheet and thereafter approval of the same from the Minister.

12. In the opinion of this Court, even if the facts as alleged by the petitioner are taken to be true, no offence whatsoever is made out against the respondents. Reliance placed by the petitioner upon the orders of the CAT fixing a time limit for issuance of a chargesheet is completely misplaced. The direction issued in the order dt.25.10.2010 cannot be construed to mean that once the time limit of four weeks expired on 24.11.2010, no charge-sheet could be issued thereafter or that the disciplinary proceedings would automatically come to an end after 24.11.2010. There is no such stipulation in the said order of the CAT. Even otherwise, the time limit fixed by the CAT was not a relevant fact to be considered by the CVC or the Minister while granting their respective approvals to issue a charge-sheet to the petitioner. Hence no fault can be found with the respondents if they did not

place the order of the CAT before the CVC or the Minister.

13. I may also note at this stage that the petitioner had challenged his suspension order before the CAT, amongst others, on the ground of malafide. The CAT in its order dt.25.10.2010 has held as E. Nagachandran vs. D.K. Sharma & Ors under:

"17. From above, it is clear that respondents have already prepared draft charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 which has been sent to the CVC for seeking their first stage advice, therefore, it cannot be stated that applicant is kept under continued suspension without any justification. It is not a case where no action was being taken after putting him under suspension but the file was moving for completing the process. It is correct that in the instructions it is mentioned that charge sheet should be served within 6 months but if due to some reasons it is not issued within the stipulated period, it will not make the suspension bad in law specially when applicant's case was considered by the Review Committee from time to time and his suspension was continued as per the recommendations of the Committee. In fact, after draft charge sheet was prepared and sent to the CVC, applicant's suspension has been revoked vide order dated 13.08.2010 (page 216) and he has been given posting order also on 18.08.2010, wherein period of 13.08.2010 to 18.08.2010 has been treated as 'compulsory wait' for the purpose of drawing salary which shows the bona fides of the department.

18. In view of above, it cannot be stated that applicant was suspended due to any malice or his continued suspension was without any valid reason. We, therefore, find no good ground to interfere in this case. However, before we part we would like to direct the respondents to issue the charge sheet at the earliest, i.e., within 4 weeks so that applicant may defend himself and matter may be taken to a logical conclusion."

14. Perusal of the observations of the CAT in paras 17 and 18 reveal that the allegations of malafide made by the petitioner have been rejected. The CAT has found that the disciplinary action taken against the petitioner were based on serious allegations and it was necessary to suspend him to maintain decorum in the office.

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15. The Ld. Counsel for the respondents had placed on record a copy of the order dated 01.07.2014 of the Court of Sh. Bharat Parashar, then Ld. ASJ-01 in Criminal Revision No. 22 of 2014. Perusal of the said order reveals that the petitioner had earlier approached the Ld. Trial Court with another complaint against T.S. Jawahar (respondent no.2 herein) in which it was alleged that the CVC had sought clarifications vide communication dated 19.10.2010 in response to which T.S. Jawahar had given clarifications vide communication dated 09.02.2011 in which false information was furnished to the CVC. The petitioner alleged that T.S. Jawahar had committed the offences punishable under sections 167/177/182/218 of the IPC. This complaint was rejected by the Ld. MM vide order dated 24.01.2014 holding that in the absence of sanction for prosecution under section 197 of the Cr.P.C.,

the complaint could not be entertained. The said order was challenged by way of Criminal Revision No. 22 of 2014 which was also dismissed by order dated 01.07.2014. The Ld. Revisional Court after going through the complaint in detail returned its findings in para no.22 of its order as under:-

"22. In view of my aforesaid discussion, I am of the considered opinion that petitioner is simply trying to circumvent the departmental proceedings which have been initiated against him by filing the present case. This question of requirement of sanction u/s 197 Cr.P.C. in the present matter does not arise at all as no offence at all is found to have been committed by the accused."

16. No further proceedings have been taken against the order dated 01.07.2014. The said order has attained finality as on date. The only difference between the previous and the present complaint is that the respondent no.1 has now prepared a note for approval of issuance E. Nagachandran vs. D.K. Sharma & Ors of charge-sheet to the petitioner in view of the concurrence of the CVC with the draft chargesheet. No offence was made out prior to receipt of advice of CVC. The further action taken by the respondents in pursuance of the first stage advice of the CVC will also not attract any criminal proceedings. This is apart from the findings of this Court that even the present complaint does not disclose commission of any offence by any of the respondents.

17. The present proceedings are nothing but repeated efforts on the part of the petitioner to wreak vengeance upon the respondents for the disciplinary proceedings which have been initiated and are pending against him.

18. For the reasons recorded above, the revision petition has no merit and is dismissed. Cost of Rs.25,000/- is imposed upon the petitioner for having indulged in such frivolous litigation which shall be deposited by the petitioner with the "New Delhi District Legal Services Authority (NDDLSA) Cost Fund" Saving A/c. No. 18580110050705, Uco Bank, Patiala House Courts Complex, New Delhi. TCR be sent back to the Ld. Trial Court along with copy of this order. The petitioner shall appear before the Ld. Trial Court on 15.03.2017 and shall furnish proof of deposit of cost failing which the Ld. Trial Court shall take appropriate steps to ensure compliance of the order of deposit of cost. Revision file be consigned to the record room.

Announced in the open Court
on 28th February, 2017

(REETESH SINGH)
ASJ-02/FTC, PHC/NDD
28.02.2017

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28.02.2017

Present: None.

By separate order the revision petition is dismissed. Cost of Rs.25,000/- is imposed upon the petitioner for having indulged in such frivolous litigation which shall be deposited by the petitioner with the "New Delhi District Legal Services Authority (NDDLSA) Cost Fund"

Saving A/c. No. 18580110050705, Uco Bank , Patiala House Courts Complex, New Delhi .

TCR be sent back to the Ld. Trial Court along with copy of this order. The petitioner shall appear before the Ld. Trial Court on 15.03.2017 and shall furnish proof of deposit of cost failing which the Ld. Trial Court shall take appropriate steps to ensure compliance of the order of deposit of cost. Revision file be consigned to the record room.

(Reetesh Singh) ASJ-02/FTC, New Delhi District, Patiala House Courts, New Delhi
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