State Of N.C.T.Of Delhi vs Ajay Kumar Tyagi on 31 August, 2012

Author: Chandramauli Kr. Prasad

Bench: Sudhansu Jyoti Mukhopadhaya, Chandramauli Kr. Prasad, R.M. Lodha

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1334 OF 2012
(@ SLP(Crl.) No. 1383 of 2010)

STATE OF N.C.T. OF DELHI … APPELLANT

VERSUS

AJAY KUMAR TYAGI …RESPONDENT

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

Ajay Kumar Tyagi, at the relevant time, was working as a Junior Engineer with the Delhi Jal Board. Surinder Singh, a Constable with the Delhi Police applied to the Delhi Jal Board, hereinafter referred to as 'the Board', for water connection in the name of his wife Sheela Devi. The application for grant of water connection was cleared by the Assistant Engineer and the file was sent to said Ajay Kumar Tyagi (hereinafter refered to as 'the accused').

Constable Surinder Singh lodged a report with the Anti Corruption Branch alleging that the accused demanded bribe of Rs. 2000/- for clearing the file and a sum of Rs. 1000/- was to be paid initially and the balance amount after the clearance of file. On the basis of the information lodged, a trap was laid and, according to the prosecution, the accused demanded and accepted the bribe of Rs. 1000/-. This led to registration of the first information report under Section 7/13 of the Prevention of Corruption Act.

After investigation, charge-sheet was submitted on 19th of September, 2002 and the accused was put on trial. Charges were framed by the Special Judge.

In respect of the same incident, a departmental proceeding was also initiated against the accused and the Article of Charges was served on him. In the departmental proceeding it was alleged that the accused "being a public servant in discharge of his official duties by corrupt and illegal means or

otherwise, abusing his official position, demanded, accepted and obtained Rs. 1000/- (One Thousand) as illegal gratification other than legal remuneration from Sh. Surinder Singh S/o Shri Ram Bhajan r/o H.No. 432-A, Gali No. 2, 80 Sq. Yards, Village Mandoli, Delhi in consideration for giving a report on the water connection".

The enquiry officer conducted the departmental inquiry and submitted its report. The inquiry officer observed that "the evidence on record does not substantiate the charge of demand and acceptance of bribe" by the accused and, accordingly, recorded the finding that the charge against the accused has not been proved due to lack of evidence on record.

It seems that no action was taken on the report of the inquiry officer due to pendency of the criminal case pending against the accused. Accordingly, he filed writ petition before the Delhi High Court inter alia praying for conclusion of the departmental proceeding. The submission made by the accused did not find favour with the High Court and by the judgment and order dated 2nd of February, 2007, it dismissed the writ petition inter alia observing as follows:

> "Hence, I do not find the action of the respondents in keeping the departmental proceedings in abeyance to be in any manner unjustified specially when the petitioner inspite of the pendency of the criminal case against him has not been suspended from service and is continuing to perform his duties." Thereafter, the accused resorted to another remedy under Section 482 of the Code of Criminal Procedure and prayed for quashing of the first information report lodged against him under Section 7/13 of the Prevention of Corruption Act. The prayer for quashing of the first information report was founded on the ground that since the accused has been exonerated in the disciplinary proceeding by a detailed speaking order, the first information report deserves to be quashed on that ground alone. Reliance was placed on a decision of this Court in the case of P.S. Rajya v. State of Bihar, 1996 (9) SCC 1.

The High Court referred to the allegation made in the criminal case and the departmental proceeding and observed that "there is not even an iota of doubt that the charges framed in both the proceedings are the same". Accordingly, it quashed the criminal proceedings and while doing so, observed as follows :

> "Considering the foregoing discussion, I am of the view that if the departmental proceedings end in a finding in favour of the accused in respect of allegations which form basis for criminal proceedings then departmental adjudication will remove very basis of criminal proceedings & in such situation continuance of criminal proceedings will be a futile exercise & an abuse of the process of Court. I find that the charge in the present case is based on the same allegations which were under consideration before the Enquiry Officer of the Jal Board. If the charge could not be proved in the departmental proceedings where the standard of proof was much lower it is very unlikely that the same charge could be proved in a criminal trial where the standard of proof is quite stringent comparatively. Thus, the prosecution of the petitioner in criminal proceedings would only result in his harassment." Aggrieved by the same,

the State has preferred this special leave petition.

Leave granted.

It is relevant here to state that after quashing of the criminal proceeding by the High Court, the disciplinary authority, by order dated 25th of March, 2009, exonerated the accused of the charges "subject to the condition that if any appeal is filed by the State and an order contrary to the impugned High Court order dated 25.08.2008 is received, the matter will be re-opened". The disciplinary authority had referred to the order of the High Court quashing the criminal prosecution and exonerated the accused on that ground alone.

When the matter came up for consideration before a Bench of this Court on 13th of September, 2010, finding conflict between two-Judge Bench decisions of this Court, it referred the matter for consideration by a larger Bench and, while doing so, observed as follows:

"The facts of the case are that the respondent has been accused of taking bribe and was caught in a trap case. We are not going into the merits of the dispute. However, it seems that there are two conflicting judgments of two Judge Benches of this Court; (i) P.S. Rajya vs. State of Bihar reported in (1996) 9 SCC 1, in which a two Judge Bench held that if a person is exonerated in a departmental proceeding, no criminal proceedings can be launched or may continue against him on the same subject matter, (ii) Kishan Singh Through Lrs. Vs. Gurpal Singh & Others 2010 (8) SCALE 205, where another two Judge Bench has taken a contrary view. We are inclined to agree with the latter view since a crime is an offence against the State. A criminal case is tried by a Judge who is trained in law, while departmental proceeding is usually held by an officer of the department who may be untrained in law. However, we are not expressing any final opinion in the matter.

In view of these conflicting judgments, we are of the opinion that the matter has to be considered by a larger Bench." This is how the matter is before us.

Mr. J.S. Attry, Sr. Advocate appearing on behalf of the appellant submits that the very assumption, on which the High Court had proceeded, that the accused has been exonerated in the disciplinary proceeding is unfounded on facts. He points out that the inquiry officer had submitted its finding and found the allegation to have not been proved but that would not mean that the accused has been exonerated in the disciplinary proceeding also. He points out that the report of the inquiry officer was yet to be considered and nothing prevented the disciplinary authority to disagree with the finding of the inquiry officer and punish the accused after following the due process of law. On this ground alone the order of the High Court is fit to be quashed, submits Mr. Attry.

Mr. Chetan Sharma, Sr. Advocate representing the respondent-accused, however, submits that at such a distance of time, the disciplinary authority is precluded from passing any order and the

disciplinary proceeding shall be deemed to have been ended in exoneration.

We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr. Attry. True it is that the inquiry officer has submitted its report and found the allegation to have not been proved but, that is not the end of the matter. It is well settled that the disciplinary authority is not bound by the conclusion of the inquiry officer and, after giving a tentative reason for disagreement and providing the delinquent employee an opportunity of hearing, can differ with the conclusion and record a finding of guilt and punish the delinquent employee. In the present case, before the said stage reached, the accused filed an application under Section 482 of the Code of Criminal Procedure for terminating the criminal proceedings and the High Court fell into error in quashing the said proceedings on the premise that the accused has been exonerated in the departmental proceeding. As the order of the High Court is founded on an erroneous premise, the same cannot be allowed to stand.

It is worthwhile to mention here that in the writ petition filed by the accused himself seeking conclusion of the departmental proceeding, the High Court had observed that keeping the departmental proceeding in abeyance till the pendency of the criminal case is not unjustified, and that order has attained finality. Further, the order dated 25th of March, 2009 passed by the disciplinary authority exonerating the accused from the charges, is founded on the ground of quashing of the criminal proceedings by the High Court and in that, it has clearly been observed that if an order contrary to the High Court order is received, the matter will be re- opened.

As we have taken the view that the impugned order of the High Court suffers from an apparent illegality, the same deserves to be set aside so also the order of the disciplinary authority founded on that and, in the light of the direction of the High Court, the departmental proceeding has to be reopened and kept in abeyance till the conclusion of the criminal case.

Now we proceed to consider the question of law referred to us, i.e., whether the prosecution against an accused, notwithstanding his exoneration on the identical charge in the departmental proceeding could continue or not! Mr. Sharma, with vehemence, points out that this question has been settled and set at rest by this Court in the case of P.S. Rajya (Supra), which has held the field since 1996, hence at such a distance of time, it is inexpedient to reconsider its ratio and upset the same. Mr. Attry, however, submits that this Court in the aforesaid case has nowhere held that exoneration in the departmental proceeding would ipso facto terminate the criminal proceeding.

We have given our anxious consideration to the submissions advanced and in order to decipher the true ratio of the case, we have read the judgment relied on very closely. In this case, the allegations against the delinquent employee in the departmental proceeding and criminal case were one and the same, that is, possessing assets disproportionate to the known sources of income. The Central Bureau of Investigation, the prosecutor to assess the value of the assets relied on the valuation report given later on. This Court on fact found that “the value given as basis for the charge- sheet is not value given in the report subsequently given by the valuer.” This would be evident from the following passage from paragraph 15 from the judgment:

"15.....According to the learned counsel the Central Vigilance Commission has dealt with this aspect in its report elaborately and ultimately came to a conclusion that the subsequent valuation reports on which CBI placed reliance are of doubtful nature. The same view was taken by the Union Public Service Commission. Even otherwise the value given as basis for the charge-sheet is not the value given in the report subsequently given by the valuers." Thereafter, this Court referred to its earlier decision in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, and reproduced the illustrations laid down for exercise of extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure for quashing the criminal prosecution. The categories of cases by way of illustrations, wherein power could be exercised either to prevent the abuse of the process of the court or otherwise to secure the ends of justice read as follows:

"(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 Act concerned (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 Act concerned, 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." The aforesaid illustrations do not contemplate that on exoneration in the departmental proceeding, the criminal prosecution on the same charge or evidence is to be quashed. However, this Court quashed the prosecution on the peculiar facts of that case, finding that the said case can be brought under more than one head enumerated in the guidelines. This would be evident from paragraphs 21 and 22 of the judgment, which read as follows:

"21. The present case can be brought under more than one head given above without any difficulty.

22. The above discussion is sufficient to allow this appeal on the facts of this case." Even at the cost of repetition, we hasten to add none of the heads in the case of P.S. Rajya (Supra) is in relation to the effect of exoneration in the departmental proceedings on criminal prosecution on identical charge. The decision in the case of P.S. Rajya (Supra), therefore does not lay down any proposition that on exoneration of an employee in the departmental proceeding, the criminal prosecution on the identical charge or the evidence has to be quashed. It is well settled that the decision is an authority for what it actually decides and not what flows from it. Mere fact that in P.S. Rajya (Supra), this Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground. This would be evident from paragraph 23 of the judgment, which reads as follows:

"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." (underlining ours) From the reading of the aforesaid passage of the judgment it is evident that the prosecution was not terminated on the ground of exoneration in the departmental proceeding but, on its peculiar facts.

It is worth mentioning that decision in P.S. Rajya (supra) came up for consideration before a two-Judge Bench of this Court earlier, in the case of State v. M. Krishna Mohan, (2007) 14 SCC 667. While answering an identical question i.e. whether a person exonerated in the departmental enquiry would be entitled to acquittal in the criminal proceeding on that ground alone, this Court came to the conclusion that exoneration in departmental proceeding ipso fact would not lead to the acquittal of

the accused in the criminal trial. This Court observed emphatically that decision in P.S. Rajya (supra) was rendered on peculiar facts obtaining therein. It is apt to reproduce paragraphs 32 and 33 of the said judgment in this connection:

"32. Mr Nageswara 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: (P.S. Rajya case [1996 (9) SCC 1, SCC p.9, para 23)] "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." Ultimately this Court concluded as follows:

"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." This point also fell for consideration before this Court in the case of Supdt. of Police (C.B.I.) v. Deepak Chowdhary, (1995) 6 SCC 225, where quashing was sought for on two grounds and one of the grounds urged was that the accused having been exonerated of the charge in the departmental proceeding, the prosecution is fit to be quashed. Said submission did not find favour with this Court and it rejected the same in the following words:

"6. The second ground of departmental exoneration by the disciplinary authority is also not relevant. What is necessary and material is whether the facts collected during investigation would constitute the offence for which the sanction has been sought for." Decision of this Court in the case of Central Bureau of Investigation v. V.K. Bhutiani, (2009) 10 SCC 674, also throws light on the question involved. In the said case, the accused against whom the criminal proceeding and the departmental proceeding were going on, was exonerated in the departmental proceeding by the Central Vigilance Commission. The accused challenged his prosecution before the High Court relying on the decision of this Court in the case of P.S. Rajya (supra) and the High Court quashed the prosecution. On a challenge by the Central Bureau of Investigation, the decision was reversed and after relying on the decision in the case of M. Krishna Mohan (supra), this Court came to the conclusion that the quashing of the prosecution was illegal and while doing so observed as follows:

"In our opinion, the reliance of the High Court on the ruling of P.S. Rajya was totally uncalled for as the factual situation in that case was entirely different than the one prevalent here in this case." Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya (Supra). In fact, there are precedents, to which we have referred to above speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.

We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result into the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further they are not in the same hierarchy.

For the reasons stated above, the order of the High Court is unsustainable, both on facts and law.

Accused shall appear before the trial court within four weeks from today. As the criminal proceeding is pending since long, the learned Judge in sesin of the trial shall make endeavour to dispose off the same expeditiously and avoid unnecessary and uncalled for adjournments.

In the result, the appeal is allowed, the order of the High Court is set aside with the direction aforesaid.

.....J. (R.M. LODHA) .....J. (CHANDRAMAULI KR. PRASAD) .....J. (SUDHANSU JYOTI MUKHOPADHAYA) New Delhi August 31, 2012