THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.07.2007

+ **CRL REV. P. No.652/2004**

SATISH KUMAR ARORA ... Petitioner

- versus -

CENTRAL BUREAU OF INVESTIGATION ... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr C.L. Gupta.
For the Respondent/CBI : Mr R.M. Tiwari.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. This Criminal Revision Petition is directed against the order on charge dated 20.9.2004 passed by the learned Special Judge, Delhi directing that a charge under Section 120B IPC read with Sections 7, 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 be framed against all the accused persons including the petitioner herein (Satish Kumar Arora). A separate charge was also directed to be framed against all the accused under Sections 7, 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. The charge against the petitioner is that he, being a public servant,

working as Deputy Regional Director, National Saving Organisation, Ministry of Finance, Tis Hazari, Delhi, during the period 1999, demanded and accepted different amounts ranging between Rs 200/- to Rs 800/- from different agents who were running National Saving Agencies for a motive or reward of clearing their commission bills and for renewal of their savings agencies. It is also alleged that the petitioner by abusing his official position or otherwise by corrupt or illegal means obtained pecuniary advantage of different amounts ranging between Rs 200/- to Rs 800/- from the agents of his organisation. Furthermore, there was an allegation of conspiracy between the petitioner and the two other co-accused. It is in these circumstances, that the charges, as directed by the impugned order dated 20.9.2004, were framed against the petitioner as well as the other co-accused by separate orders of the same date, i.e. 20.9.2004.

2. The facts are that on 6.5.1999 a complaint against Shri H.K. Pal, District Savings Officer, National Savings, Tis Hazari, Delhi, was lodged with the Regional Director, National Savings Organisation, Deen Dayal Upadhaya Marg, New Delhi, by the agents of the National Savings Organsation, alleging *inter alia*, corruption on the part of the said Shri H.K. Pal. On the basis of the said complaint, statements of several agents were recorded. Two of the statements contained allegations also against the present petitioner. On the basis of this complaint and the said statements, the petitioner was put under

suspension by an order dated 30.9.1999. Thereafter, the petitioner was charge-sheeted and a departmental inquiry was ordered. The two articles of charge related to:-

(1) Corruption charges;

(2) Failure to take appropriate action against subordinate officers indulging in gross misconduct and harassing the agents and demanding and accepting bribes.

3. The Inquiry Officer sent his report to the National Savings Commissioner, Nagpur, on the basis of which Mr U.K. Sinha, Joint Secretary, Ministry of Finance, issued an order, exonerating the petitioner from the first article of charge which related to corruption inasmuch as the same had not been proved. With regard to the second article of charge the same was held against the petitioner and a minor penalty was imposed thereon with regard to reduction of pay.

4. It is contended by the learned counsel for the petitioner that the present case being prosecuted by the CBI*, inter alia,* against the petitioner is based on the same allegation of corruption and alleged illegal gratification. It is submitted by the learned counsel for the petitioner that at the stage of framing of charges three legal objections were raised before the learned Special Judge, to indicate that the charges cannot at be framed against the petitioner. The first objection was that the sanctioning authority which is also the appointing and

removing authority is the National Savings Commissioner, Nagpur, who retired in July, 2001and thereafter, nobody was appointed till 24.7.2002. On that date Shri U.K. Sinha, Joint Secretary, Ministry of Finance, was appointed as Disciplinary Authority, but no Gazetted Notification was placed on record in respect of such appointment. It was, therefore, contended that the sanction granted to Shri U.K. Sinha in the absence of the Gazetted Notification is illegal and bad in law and, therefore, the Court could not have taken cognizance and the charge could not be framed.

5. The second objection to the framing of charge is that, in any event, the sanction granted was without any application of mind. This is apparent from the fact that the sanction so granted by Mr U.K. Sinha is by his order dated 16.4.2004 whereas it was the same Mr U.K. Sinha who had, by virtue of his order dated 3/7.4.2003, exonerated the petitioner in respect of the corruption charges in consultation with the Central Vigilance Commission. As indicated above, only a minor penalty against the subordinate officer was imposed. It was, therefore, contended by the learned counsel for the petitioner that it is obvious that while granting sanction Mr U.K. Sinha had not applied his mind at all because earlier he had passed an order exonerating the petitioner of the same charges of corruption. It was further pointed out by the learned counsel for the petitioner that in the sanction order dated 16.4.2003 it had been mentioned that the departmental proceedings had been initiated against the petitioner and

others whereas on that day i.e. on 16.4.2003, the proceedings were already completed insofar as the petitioner was concerned and the action of minor penalty had already been imposed against the petitioner. This also shows that there was a complete non-application of mind while granting sanction for prosecution. It is further submitted that had the sanctioning authority informed the CBI that the petitioner had not been found guilty in the departmental inquiry and had been exonerated in respect of the charges of corruption, the case against the petitioner may not even have been registered by the CBI.

6. The third objection taken on behalf of the petitioner was that as the petitioner had been exonerated from corruption charges in the departmental inquiry, there was no question of framing of charges on the same ground in a criminal case against the petitioner. The learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of ***P.S. Rajya v. State of Bihar: (1996) 9 SCC I***.

7. With regard to the question of non-application of mind by the sanctioning authority, the learned counsel for the petitioner had relied upon the decision of this Court in the case of ***State through CBI V. Ravinder Singh***: ***1995 (3)Recent CR 772***. He also placed reliance on a decision of the Punjab and Haryana High Court in ***Harmesh Kumar v. State of Punjab***: ***1999 (2) RCR***

(Crl.) 351 and upon the decision of the Supreme Court in the case of ***Mansukhlal Vithaldas Chauhan v. State of Gujarat***: ***AIR 1997 SC 3400***.

8. The learned counsel for the petitioner also drew my attention to the impugned order dated 20.9.2004, where it is recorded that the learned senior public prosecutor submitted that the prosecution shall be filing a copy of the Gazetted Notification before summoning the sanctioning authority. However, it is pointed out by the learned counsel for the petitioner that after the framing of the charge on 20.9.2004, the sanctioning authority (Mr U.K. Sinha) was examined as PW5 on 11.4.2005. The Gazette Notification had not been filed before summoning PW5. Apart from this, he submitted that PW5 (Mr U.K. Sinha) has admitted in his cross-examination to the following effect:-

> "It is correct that only office order was there assigning me the duties of disciplinary authority and there is no notification to that effect in my name."

Thus, according to the learned counsel for the petitioner, there is no Gazette Notification and, accordingly, the purported sanctioning authority had no power to grant sanction.

9. Mr R.M. Tiwari, the learned counsel appearing on behalf of the CBI, submitted that the charges had been appropriately framed and this Court ought not to interfere with the same. His first argument was that as per the law

laid down by the Supreme Court in the case of ***State of Orissa V. Debendra Nath Padhi:* (2005) 1 SCC 568**, at the stage of framing of charge, hearing the submissions of the accused has to be confined to the material produced by the prosecution. He submitted that there is no provision in the Code which grants to the accused any right to file any material or document at the stage of framing of charge and that such a right is available to the accused only at the stage of trial. In this context, Mr Tiwari submitted that the order dated 3/7.4.2003 exonerating the petitioner in respect of the corruption charges, has neither been supplied to the CBI by the petitioner/accused nor has the same been relied upon by the CBI in the charge sheet. He submits that the said order dated 3/7.4.2003 had not been produced or placed on record by the CBI and, therefore, cannot be looked into at the stage of framing of charges. He also submitted that in his deposition, PW5 (Mr U.K. Sinha) has stated that "CBI was not intimated by our department that accused No.1 was exonerated in departmental inquiry in respect of the first charge i.e. corruption charge." Thus, according to Mr Tiwari, the petitioner cannot take this plea for the purpose of impugning the order on charge as well as the charges framed.

10. Mr Tiwari also submitted that as per the provisions of Section 19 (3) (a) of the Prevention of Corruption Act, 1988, no finding, sentence or order passed by a Special Judge, ought to be reversed or altered by a Court in Appeal, Confirmation or Revision on the ground of the absence of, or any error,

omission or irregularity in, the sanction required under Sub-Section (1), unless a failure of justice has in fact been occasioned thereby. He placed reliance on the Supreme Court Judgment in ***Satya Narayan Sharma v. State of Rajasthan***: ***(2001) 8 SCC 607*** (Paragraph 14 and 26). Mr Tiwari concluded by saying that there is no incorrectness, illegality, irregularity or impropriety in the impugned order on charge and that the petitioner shall have ample opportunity to defend himself during the trial before the learned Special Judge. He submitted that the impugned order ought not to interfered with and the petition ought to be dismissed.

11. In rejoinder, the learned counsel for the petitioner, apart from reiterating his earlier contentions, submitted that the documents produced by the petitioner can be looked into at the stage of considering the question of discharge and/or of framing of charges under Section 227 and 228 of the Code of Criminal Procedure, 1973. He urged that the submissions of the accused have to be heard and taken into account and the documents filed by the accused in his favour are also to be considered. For this proposition, he placed reliance on the Supreme Court decision in the case of ***State of Madhya Pradesh v. Mohan Lal Soni: 2000 [2] JCC [SC] 676***.

12. In ***P.S. Rajya*** *(supra)*, the short question that arose for consideration before the Supreme Court was whether the respondent therein

was justified in pursuing the prosecution against the appellant therein under the provisions of 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 departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission. In the background of this question, the Supreme Court observed as under:-

> "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."

The Supreme Court decided the question in favour of the appellant therein and quashed the criminal proceedings against him. The learned counsel for the petitioner has placed strong reliance on this decision. It was submitted, as noted above, that the petitioner had been exonerated in the departmental proceedings in respect of the corruption charges and, therefore, the criminal case based upon the same facts and charges could not be continued. As a

general proposition, it is correct that the standard of proof required to establish guilt in a criminal case is far greater than the standard of proof required to establish liability in departmental proceedings. Therefore, if a person has been exonerated in departmental proceedings, there would be little hope of the same person being found guilty in a criminal case. But there are two difficulties in applying the said principle to the present case. The first difficulty is that the order exonerating the petitioner of the corruption charges in the departmental proceedings has not been filed by the prosecution. It is a document which has been introduced by the accused. The question is whether this document could be looked into by the Court while framing charges? This will be dealt with in detail shortly. The other difficulty is that in ***P.S. Rajya*** *(supra)*, the counsel appearing on behalf of the respondent had accepted that the charge in the departmental proceedings and in the criminal proceedings was one and the same. He also did not dispute the finding in the departmental proceedings and the ultimate result of it. It is based on these concessions that the Supreme Court observed that there would be no difficulty in accepting the case of the appellant because if the identical charge could not be established in a departmental proceedings "what is there further to proceed against the appellant in criminal proceedings". Unfortunately, for the petitioner herein, the learned counsel for the CBI has made no such concession. He has not accepted that the charge in the departmental proceedings with regard to corruption and the charge in the present proceedings are identical. It is also not the case that the learned counsel

for the CBI does not dispute the findings rendered in the departmental proceedings and the ultimate result of it. Therefore, the decision in ***P.S. Rajya*** *(supra)* was rendered under different circumstances and, while the general proposition that the degree of proof required to establish guilt in a criminal case is far greater than that required in departmental proceedings is unexceptionable, it must also be seen whether the charge in the departmental proceedings is identical to the charge in the criminal proceedings. At the stage of framing of the charges, the record of the departmental proceedings was not before the learned Special Judge. This Court has to examine the legality and propriety and correctness of the impugned order on charge dated 20.9.2004 based upon the material available to and the material that could be looked into by the learned Special Judge on the date on which it passed the order on charge.

13. This brings me to the discussion of whether any document produced by the accused can be looked into by the trial Court at the time of framing of charges. In ***Debendra Nath Padhi's*** case *(supra)*, the Supreme Court after discussing several of its earlier decisions including ***P.S. Rajya*** *(supra)* and the ***State of M.P. Vs. Mohan Lal Soni*** *(supra)* came to the conclusion that:-

> ".....law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case [(1996) 9 SCC 766] holding that the trial court has powers to consider even materials which the accused may

> produce at the stage of Section 227 of the Code has not been correctly decided."

In ***Satish Mehra*** *(supra)*, observations had been made to the effect that if the accused could produce any reliable material even prior to the stage of trial which might totally affect the case, the refusal to look material so produced, may result in injustice, apart from wasting valuable or judicial public time. These observations in ***Satish Mehra*** *(supra)* were held to be *obiter dicta* by the Supreme Court in the case of ***Debendra Nath Padhi*** *(supra)*. The Supreme Court also observed:-

> "Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter XVIII and Sections 239 and 240 in Chapter XIX."

It must be reiterated that both the decisions relied upon by the learned counsel for the petitioner in the case of ***P.S. Rajya*** *(supra)* and ***State of Madhya Pradesh v. Mohan Lal Soni*** *(supra)* were considered and distinguished by the later decision of the Supreme Court in the case of ***Debendra Nath Padhi*** *(supra)*. While it is true that in ***Mohan Lal Soni's*** case *(supra)*, the Court was of the view that documents produced by the accused could be looked into, that view was based on the earlier decision in the case of ***Satish Mehra*** *(supra)*. Since ***Satish Mehra*** *(supra)* stands overruled by the later decision of a larger Bench in the case of ***Debendra Nath Padhi*** *(supra)*, no reliance can be placed on the decision in ***Mohan Lal Soni (****supra)*. The law, as stated in ***Debendra***

Nath Padhi *(supra),* is that at the time of framing of charge, the accused has no right to produce any material because if he was permitted to do so and if he was permitted to present his defence at the stage of framing of charge, it would amount to the consideration of the entire case at that stage itself which is against criminal jurisprudence.

14. In view of this discussion, it is apparent that the purported exoneration order dated 3/7.4.2003 which has been filed on behalf of the petitioner could not be looked into by the Court framing charges because the same did not form part of the documents accompanying the charge sheet.

15. This being the position, I am left to consider only the question of sanction. Mr Tiwari has rightly pointed out that as per the provisions of Section 19 (3) (a) of the Prevention of Corruption Act, 1988, no finding, sentence or order passed by a Special Judge, can be reversed or altered by a Court in Appeal, Confirmation or Revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under Sub Section (1), unless a failure of justice has, in fact, been occasioned thereby. In the arguments advanced by the learned counsel for the parties, it has not been established that any failure of justice has been occasioned. Therefore, the arguments with regard to the points of validity of sanction and the Gazetted Notification not being produced would be of no consequences at this stage.

16. It would be pertinent to refer to a decision of the Supreme Court in the case of ***Superintendent of Police (C.B.I.) v. Deepak Chowdhary and Others*****: 1995 (6) SCC 225**. In that case, the accused was working as a Brnach Manager of United Bank of India at Calcutta and it was realised that certain officers working in that bank had conspired with a creditor and the bank had been defrauded for an amount of Rs.45,000/-. The competent authority had accorded sanction under Section 6 (1-c) of the Prevention of Corruption Act, 1947 for proceeding with the criminal case against the accused for various IPC offences as well as offences under the Prevention of Corruption Act. The accused filed a writ petition in the High Court to quash the sanction so accorded. The High Court quashed the sanction on two grounds, namely, that the accused was not given an opportunity of hearing before granting sanction and that in the departmental inquiry conducted by the bank, the accused had been exonerated of the charge. With regard to the first ground, namely, the requirement of opportunity of hearing, the Supreme Court held that the grant of sanction is only an administrative function and, therefore, there was no need to provide an opportunity of hearing to the accused before according sanction. The Supreme Court held that the High Court was, therefor, in error in holding that the sanction was vitiated by violation of principles of natural justice. With regard to the ground of exoneration in departmental proceedings, the Supreme Court held as under:-

> "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."

17. It is apparent that the Supreme Court was of the view that exoneration in the departmental proceedings was of no consequence at the time of considering the sanction by the competent authority. All that was necessary and material was whether the facts collected during investigation would constitute the offence for which the sanction had been sought. The plea taken by the petitioner that he had been exonerated in departmental proceedings and, therefore, the sanction ought not to have been granted for initiation of criminal proceedings has to be rejected.

18. In view of the aforesaid discussion, I find that there is no infirmity with the order on charge and, accordingly, this revision petition is dismissed. It is made clear that the observations made herein are only for the purpose of construing the appropriateness of the order framing the charge. They shall not be taken into account at the time of trial of the case and it would be open to the parties to urge all issues before the Trial Court.

BADAR DURREZ AHMED
(JUDGE)

July 04, 2007

J.