

Vijeyesh Pande vs State & Anr on 20 August, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 2181/2019 & CRL.M.A. 8718/2019
VIJEYESH PANDE

Through:

STATE & ANR.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 20.08.2024

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), inter alia, challenging the order dated 26.03.2019, passed by the learned Additional Sessions Judge ('ASJ'), South-East District, Saket Courts, New Delhi, in Crl. Rev.765/2018.

2. The petitioner also challenges that summoning order dated 14.03.2018 and the order dated 18.09.2018, pursuant to which notice was framed against the petitioner under Sections 417/465/471 of the Indian Penal Code, 1860 (IPC). The challenge to the said orders, was dismissed by the order dated 26.03.2019, passed by the learned ASJ.

3. The complaint was filed by Respondent No.2 alleging that on 08.12.2012/09.12.2012, the petitioner had represented himself to be a delegate of Kendriya Vidyalaya-I, Satna, Madhya Pradesh to contest the election for the post of General Secretary of All India Kendriya Vidyalaya Teacher's Association ('AIKVTA'), even though, on the said dates, the petitioner had already been transferred and could not have represented This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 30/08/2024 at 21:56:59 Kendriya Vidyalaya, Satna. It was the case of the complainant that the petitioner was transferred vide transfer order dated 11.06.2012. It was also alleged that the petitioner had submitted a forged list of elected members of AIKVTA.

4. The learned counsel for the petitioner submits that complainant/Respondent no.2 had also filed a civil suit, being, CS No.79/2013, on the same set of allegations.

5. He submits that the learned Civil Court, by a detailed judgment dated 31.03.2015, categorically held that no illegality has taken place in the election of the petitioner to the concerned post.

6. He submits that the learned Civil Court has also doubted the bonafide of the complainant in filing the said suit.

7. The filing of the civil suit by the complainant is not disputed.

8. The learned Civil Judge, after detailed arguments, noted that the transfer order dated 11.06.2012 was already stayed by the Central Administrative Tribunal, Jabalpur. The learned Civil Judge also noted the provisions relating to disqualification of a member. The fact that the petitioner had also deposited the subscription fee for the period up to December, 2012 was also noted.

9. After considering the same, the learned Civil Court explicitly opined that the nomination and election of the petitioner was not suffering from any irregularity. It was also held that there was no illegality in the nomination of the 5 office bearers, including the petitioner, whose elections were held by secret ballot.

10. From a perusal of the complaint under Section 156 of the CrPC and the pleadings in the suit filed before the learned Civil This is a digitally signed order.

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11. The petitioner after being exonerated by the learned Civil Court cannot be made to suffer trial in the criminal proceedings on the same set of allegations.

12. The Hon'ble Apex Court in Gurbachan Singh v. Satpal Singh : (1990) 1 SCC 445 observed as under:

"4...Criminal charges must be brought home and proved beyond all reasonable doubt. While civil case may be proved by mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt. See Mancini v. Director of Public Prosecutions [1942 AC 1 : (1941) 3 All ER 272] , Woolmington v. Director of Public Prosecutions [1935 AC 462 : 1935 All ER 1] . It is true even today, as much as it was before... There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases..."

(emphasis supplied)

13. The Hon'ble Apex Court in the case of Ashoo Surendranath Tewari v. CBI : (2020) 9 SCC 636 had discussed a number of judgments and noted that the standard of proof in departmental proceedings is lower than the one in a criminal proceedings. The relevant portion of the same is reproduced hereunder:

"8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In P.S. Rajya v. State of Bihar [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , the question before the Court was posed as follows: (SCC pp. 2-3, para 3) "3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report This is a digitally signed order.

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9. This Court then went on to state: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 5, para 17) "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."

10. This being the case, the Court then held: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , 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 [Prabhu Saran Rajya v. State of Bihar, Criminal Miscellaneous No. 5212 of 1992, order dated 3-8-1993 (Pat)] 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."

11. In Radheshyam Kejriwal v. State of W.B. [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31) "26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in

the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [B.N. Kashyap v. Crown, 1944 SCC OnLine Lah 46 : AIR This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 30/08/2024 at 21:57:00 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (SCC OnLine Lah: AIR p. 27) '... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.'

29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case."

12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows:

(Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598) "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;

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(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."

13. It finally concluded: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para

39) "39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

14. From our point of view, para 38(vii) is important and if the High Court had bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated."

(emphasis supplied)

14. It is not in doubt that a set of allegations can lead to proceedings in civil and criminal laws. However, once a Court of civil jurisdiction, after a trial between the same parties, comes to an conclusion that no case is made out, the same has a bearing on the criminal trial. Once a person is exonerated on merits and the allegation is found to be not sustainable, the criminal prosecution of the same set of facts and circumstances, cannot be allowed to This is a digitally signed order.

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continue.

15. As noted by the Hon'ble Apex Court as discussed above, the underlined principle is the higher standard of proof in criminal cases. Once a party is not able to prove its case on preponderance of probability, then the same cannot be proved in criminal proceedings which admittedly require a higher standard of proof, that is, to be proved beyond reasonable doubt.

16. It is an undisputed fact that the suit was filed by the complainant praying for declaration that election of the petitioner to the post of General Secretary of AIKVRTA be declared null and void.

17. The learned Civil Court, after examining the evidence, declined the said prayer and decreed the suit accordingly. Nothing has been brought on record to show that the said order passed by the Civil Court was challenged by the complainant.

18. Considering that the allegations in the civil suit and the complaint filed by Respondent No.2 are identical and that the learned Civil Court has adjudicated the same on merits and exonerated the petitioner, the continuation of the present criminal proceedings against the petitioner on the same set of allegations where the standard of proof is higher would amount to an abuse of process of law.

19. In view of the above, the impugned orders are set aside.

20. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J AUGUST 20, 2024 'Aman' This is a digitally signed order.

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