

**JUDGMENT RESERVED ON : 31.10.2019.
JUDGMENT DELIVERED ON : 22.11.2019.**

Case :- APPLICATION U/S 482 No. - 31673 of 2016

Applicant :- N.K. Janoo

Opposite Party :- State of U.P. and Another

**Counsel for Applicant :- Suresh C. Dwivedi, M.C.
Chaturvedi, Vimlendu Tripathi**

Counsel for Opposite Party :- G.A., Rishabh Agarwal

Hon'ble Om Prakash-VII, J.

1. This Application U/S 482 has been filed with the prayer to quash the summoning order dated 20.7.2016 passed by the Chief Judicial Magistrate, Agra in Criminal Case No. 1454 of 2014 (Shyam Kishore Shukla Vs. N. K. Janoo, D.F.O.) arising out of case crime no. 317 of 2014, under Sections 463, 464, 466, 467, 468, 471, 474 IPC, Police Station Tajganj, district Agra. Further prayer has been made for quashing the proceedings of the aforesaid criminal case.

2. Heard S/Sri Vimlendu Tripathi and Vikas Tiwari, learned counsel appearing for the applicant; Sri Rishabh Agarwal, learned counsel appearing for the opposite party no. 2 and learned A.G.A.

3. Submission of the learned counsel for the applicant is that cognizance order passed in the matter is illegal and has also been passed without applying judicial mind. Initially on the basis of order passed on the application under Section 156 (3) Cr.P.C. FIR was lodged and concerned Investigating Officer after investigation submitted final report. Thereafter protest petition was filed by the complainant/opposite party no. 2. Concerned Magistrate considering the extraneous facts and evidence annexed with the protest petition rejecting the final report took cognizance straightaway in the matter against the applicant. It is further argued that if entire prosecution case is

taken into consideration, the alleged act for which present prosecution has been started, comes under the purview of discharge of official duty. Thus, prosecution against the applicant was barred by the provisions of Section 197 Cr.P.C. as Investigating Officer has not obtained prior sanction of the competent authority. It is also argued that concerned Magistrate in the impugned order has clearly discussed the evidence which was not part of the case diary nor collected by the Investigating Officer during investigation. Apart to this, concerned Magistrate has taken into consideration the documents/facts which were annexed with the protest petition. It is also argued that documents annexed with the case diary by the Investigating Officer during investigation were in support of the applicant. There was clear evidence regarding supply of pindi plants. Observations recorded by the concerned Magistrate under the impugned order is illegal and based on extraneous material. It is next contended that one departmental enquiry was also conducted in the present matter and allegations levelled against the applicant was found false. Thereafter he was exonerated in the enquiry which was never challenged and has attained finality. Since State Government itself did not find the allegations levelled against the applicant true and departmental enquiry started against the applicant was dropped, therefore, on the strength of same set of facts continuation of the proceedings of the aforesaid criminal case will be abuse of process of law. It is also argued that departmental enquiry itself was initiated against the opposite party no. 2 regarding preparation of the forged documents. Thus, referring to the entire facts mentioned in the affidavit as well as documents annexed with the application, it was further argued that continuation of the proceeding of the aforesaid

criminal case is abuse of process of law. Thus, prayer was made to allow the application and to quash the entire proceedings of aforesaid complaint case.

4. Sri Rishabh Agarwal, learned counsel appearing for the opposite party no. 2 as well as learned A.G.A. argued that mere exoneration in the departmental enquiry will not be sufficient to quash the criminal prosecution and it can continue. Alleged act said to have been committed by the applicant was regarding preparation of forged documents for supply of the pindi plants but actually same were not supplied, instead thaili plants were supplied and it does not come within the purview of discharge of official duty. Therefore, there is no necessity to obtain prior sanction under Section 197 Cr.P.C. for prosecution of the applicant. It is next argued that opposite party no. 2 in the departmental enquiry initiated against him has also been finally exonerated. It is also argued that opposite party no. 2 in clear words has mentioned in the protest petition that investigation was not properly conducted by the Investigating Officer. Material evidence was not collected. Photostat papers annexed with the case diary regarding supply of the pindi plants were forged documents. No extraneous material /evidence have been considered by the court below at the time of passing of impugned order. Since a prima facie case is made out from the evidence available in the case diary itself to take cognizance, therefore, there is no illegality, infirmity or perversity in the impugned order. In support of his submissions, learned counsel for the opposite party no. 2 placed reliance on the following case laws :

1. State of Bihar Vs. Dharendra Prasad Shrivastava and others reported in 2015 (1) RCR (Criminal) 445.
2. State (NCT of Delhi) Vs. Ajay Kumar Tyagi reported in

(2012) 9 SCC 685.

3. Ram Chandra Sharma Vs. State of U. P. and others reported in 2016 (96) ALLCC 692.

5. Learned counsel appearing for the opposite party no. 2 also filed the enquiry report dated 30.10.2019 relating to the opposite party no. 2.

6. I have considered the rival submissions and have gone through the entire record.

7. Before dealing with the submissions, I find it necessary to quote para 24 and 25 of the case of State (N.C.T. Of Delhi) (Supra) :

“24. 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.”

25. 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.”

8. In Para 7 of the case of Ram Chandra Sharma (Supra) this court has held as under :

7. Considering the submissions advanced by learned counsel for the parties, the contention of the learned counsel for the applicant that the applicant has also been served with a charge sheet in a disciplinary proceedings and in the said proceedings after it was found that there was no substance in the allegations levelled against the applicant in the charge sheet, which was filed against him in the disciplinary proceedings, the State Government has dropped the proceedings against him on 13.8.2010 exonerating him from the charges, therefore, the criminal proceedings based on the impugned charge sheet on the same allegations is liable to be quashed appears to have no substance. The impugned charge sheet and the materials collected during the course of investigation shows that the applicant being posted as Block Development Officer in district Gonda was having an additional charge of another Block Itiyathok, district Gonda, in which there were financial irregularities committed in the implementation of Sampoorna Gramin Vikas Yojna in the district Gonda between 2001 to 2005. The preliminary enquiry was also made by the Economic Offence Wing before lodging the FIR, which found that there was financial irregularities committed by the applicant as well as the co-accused persons. Hence, it directed that an FIR be lodged against the applicant and other co-accused persons, on which the same was lodged and the charge sheet has been submitted. The case law which has been cited by the learned counsel for the applicant of P.S. Rajya (Supra) is no longer a good law. In view of the pronouncement of Hon'ble the Apex Court in the case of State (NCT of Delhi) vs. Ajay Kumar Tyagi reported in 2012 (9) SCC 685, in which the Hon'ble Apex Court has held as under:-

"In P.S. Rajya case the Supreme Court referred to its earlier decision in Bhajan Lal, 1992 Supp(91) 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 CrPC for quashing the criminal prosecution to prevent the abuse of the process of the court or otherwise to secure the ends of justice. These illustrations do not contemplate that on exoneration in the departmental proceedings, the criminal prosecution on the same

charge or evidence is to be quashed. However, the Supreme Court in P.S. Rajya case 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. The decision in P.S. Rajya case, therefore, does not lay down any preposition 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. The mere fact that in P.S. Rajya case, the Supreme Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground. The prosecution was not terminated on the ground of exoneration in the departmental proceeding but, on its peculiar facts.

9. In this matter, as is evident from the record, one departmental proceeding was initiated against the applicant regarding supply of pindi plants. Allegations against the applicant was that in fact pindi plants were not supplied by the applicant from Badsahi Bag to Lalitpur but bills/"Ravanna" were submitted for payment of pindi plants. It is also alleged that on the basis of said "Ravanna" payment was also obtained. In the departmental enquiry applicant was exonerated and recommendation was made to start enquiry against the opposite party no. 2. It is also evident that enquiry was conducted against the opposite party no. 2 by the concerned department but finally opposite party no. 2 was also exonerated. It is also evident from the record that during enquiry one Application under Section 156 (3) Cr.P.C. was moved before the concerned Magistrate with the aforesaid allegation against the applicant which was allowed and FIR was lodged. Investigating Officer concerned investigated the matter and submitted final report. Thereafter protest petition was filed by the opposite party no. 2. Concerned Magistrate after hearing

the opposite party no. 2 as well as the State on the protest petition rejected the final report and took cognizance straightaway in the matter vide impugned order which has been challenged by the applicant in this Application invoking jurisdiction under Section 482 Cr.PC.

10. It is settled position of law that exoneration in disciplinary proceeding by itself is not a ground for quashing the criminal proceeding and if alleged act for which allegations have been levelled against the accused for criminal prosecution does not come under the purview of discharge of official duty, there is no necessity to obtain prior sanction of the competent authority for prosecution. It is also settled principle of law that concerned Magistrate while dealing with the final report in a criminal case is not competent to take into consideration the extraneous material at the time of taking cognizance straightaway on the protest petition without following the procedure prescribed under Chapter XV of Cr.P.C. Evidence which are not part of the case diary nor have been collected by the Investigating Officer could not be based for taking cognizance.

11. If the submissions raised across the Bar are compared with the facts and evidence of the present matter and also with the observations recorded by the concerned Magistrate in the impugned order, it is evident that evidence which was not part of the case diary was taken into consideration by the concerned Magistrate while passing the impugned order whereby final report has been rejected and straightaway cognizance has been taken in the matter on the protest petition without following the procedure prescribed under Chapter XV of Cr.P.C. If original "Ravannas" were not part of the case diary then concerned Magistrate ought not to have taken into consideration the same at the time of passing of the impugned

order. Since in the present matter neither enquiry has been conducted under Chapter XV of the Criminal Procedure Code by the concerned Magistrate nor the documents/facts/evidence which have been relied upon by the concerned Magistrate were part of the case diary, therefore, on the basis of aforesaid sole ground, impugned order dated 20.7.2016 passed against the applicant whereby applicant was summoned to face trial, in the opinion of the court, is against the law and same is not sustainable. There was no occasion to take cognizance straightaway rejecting the final report. Other submissions raised across the Bar, for the reasons discussed herein above, need no discussion.

12. Thus, on the basis of aforesaid discussion, application having substance is liable to be allowed. Impugned order taking cognizance straightaway on the basis of protest petition is liable to be set aside as concerned Magistrate at the time of passing of the impugned order has taken into consideration the extraneous material.

13. Thus, the application is allowed and impugned order dated 20.7.2016 passed by the Chief Judicial Magistrate, Agra in Criminal Case No. 1454 of 2014 (Shyam Kishore Shukla Vs. N. K. Janoo, D.F.O.) arising out of case crime no. 317 of 2014, under Sections 463, 464, 466, 467, 468, 471, 474 IPC, Police Station Tajganj, district Agra is hereby set aside. Matter is remitted back to the concerned Magistrate to pass appropriate order afresh in accordance with law.

22.11.2019.

Sachdeva