IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.34183 of 2016

Arising Out of PS. Case No.-5 Year-1999 Thana- C.B.I CASE District- Patna

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Chhatradhri Ram S/o Late Barhan Mistri, residing at Mohallah Nutan Nagar, P.S. Hazaribagh, Moffasil, District Hazaribagh, Jharkhand.

... ... Petitioner/s

Versus

1. State Of Bihar
2. The Superintendent Vigilance Department having his office at Sarpentine Road P.S. Sachivalaya, District Patna.

... ... Opposite Party/s

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Acts/Sections/Rules:

- Sections 420, 467, 468, 471, 120B and 201 of the Indian Penal Code
- Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988

Cases referred:

- Ashoo Surendranath Tewari vs. CBI, (2020) 9 SCC 636
- Radheshyam Kejriwal vs. State of W.B., (2011) 3 SCC 581
- Md. Nausad Khan and Ors. Vs. State of Bihar and Anr. [2023 SCC Online Pat 9587]
- Subhash Sharma Vs. Govt. of NCT (2024 SCC OnLine Del 3762
- Mamta Shailesh Chandra Vs. State of Uttarakhand, [2024 SCC OnLine SC 136]
- Abhishek Vs. State of Madhya Pradesh., [AIR 2023 SC 4209]
- Thesima Begam Vs. State of T.N., [(2020) 14 SCC 580]
- Anand Kumar Mohatta Vs. State (NCT of Delhi), (2019) 11 SCC 706
- Joseph Salvaraj A. Vs. State of Gujarat, (2011) 7 SCC 59
- G. Sagar Suri v. State of U.P, (2000) 2 SCC 636
- Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749
- Ashok Chaturvedi Vs. Shitul H. Chanchani, (1998) 7 SCC 698
- Arun Shankar Shukla Vs. State of U.P. (1999) 6 SCC 146
- State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335

Petition - filed against the impugned order passed by learned Special Judge, Vigilance whereby the application of the petitioner for discharge has been rejected finding that there are sufficient materials on record to charge the petitioner under Sections 420, 467, 468, 471, 120B and 201 of

the Indian Penal Code and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988.

There is identical allegation against the petitioner in departmental proceeding as well as in the criminal prosecution. The petitioner has been alleged to have made illegal appointments of 15 persons while holding the post of Superintending Engineer. Inquiry report finding the petitioner guilty in departmental proceeding and the consequent order of punishment have been set aside by learned Writ Court and the same has been upheld by learned LPA Court giving liberty to the prosecution to proceed with the disciplinary inquiry against the petitioner from the stage of service of charge memo. However, even after lapse of 16 years, the disciplinary authority had not proceeded with disciplinary inquiry in terms of learned LPA Court. Petitioner has superannuated about 26 years back.

Held - Exoneration of the petitioner in the departmental proceeding is on merit and not on the basis of any technicality. (Para 13)

Standard of proof in departmental proceeding is only a preponderance of probability, whereas in the criminal proceeding, the prosecution is required to prove the charge against the petitioner beyond all reasonable doubts. Hence, the standard of proof in criminal proceeding is much higher than that of departmental proceeding. If the prosecution has failed to prove its charge as per the standard of preponderance of probability, needless to say that the prosecution is found to fail to prove its charge in criminal proceeding beyond all reasonable doubts against the petitioner. In such situation, subjecting the petitioner at the fag-end of his life to criminal proceeding is futile exercise and abuse of the process of Court. (Para 14)

Impugned order is not sustainable in the eye of law. It is liable to be set aside under Section 482 CrPC to prevent the abuse of the process of the Court and to meet the ends of justice. The case is squarely covered by the guidelines as given by Hon’ble Apex Court (Para 21)

Petition is allowed. (Para 22)

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... ... Petitioner/s

Versus

1. State Of Bihar
2. The Superintendent Vigilance Department having his office at Sarpentine Road P.S. Sachivalaya, District Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Vikas Mohan, Advocate
For the State : Mr. Chandra Bhushan Prasad, APP
For the Vigilance : Mr. Arvind Kumar, Spl. P.P.
For the Amicus Curiae : Mr. S.B.K. Mangalam, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

Date : 07-01-2025

The present petition under Section 482 Cr.PC has been preferred by the petitioner against the impugned order dated 01.07.2016, passed by learned Special Judge, Vigilance-Ist, Patna in Special Case No. 7 of 1999, whereby the application of the petitioner for discharge has been rejected finding that there are sufficient materials on record to charge the

petitioner under Sections 420, 467, 468, 471, 120B and 201 of the Indian Penal Code and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988.

2. As per the allegation, the petitioner while holding the post of Superintending Engineer in Public Health Engineering Department, Bihar, Patna, has made illegal appointments and promotions without following the rules and regulations. The petitioner retired on 31.01.1998 as a Superintending Engineer and departmental proceeding was started on 08.05.2000. As per the inquiry report, the petitioner was found to be guilty of illegal appointments of 15 persons. However, against the finding and the punishment arising out of inquiry report, the petitioner moved this Court under writ jurisdiction vide C.W.J.C. No. 13390 of 2000, wherein learned writ Court set aside the inquiry report dated 24.07.2000 and consequent order of punishment dated 30.11.2000, finding that the whole finding of the Inquiry Officer was perverse in view of failure of the department to supply the relevant documents in support of the allegation. Learned writ Court also rejected the prayer of the department for remanding the matter for fresh inquiry, because learned writ Court did not deem it fit to expose the petitioner to harassment at this stage of life. The writ Court

order dated 31.01.2008 was challenged in L.P.A. No. 687 of 2008, wherein learned L.P.A. Court also upheld the order of learned writ Court vide order dated 26.11.2008, though L.P.A. Court has clarified that there would be no impediment for the State Government to proceed with the disciplinary inquiry against the petitioner from the stage of service of charge memo dated 08.05.2000.

3. I heard learned counsel for the petitioner, learned Amicus Curiae and learned counsel for the Vigilance Department.

4. Learned Amicus Curiae and learned counsel for the petitioner submit that the impugned order whereby the application of the petitioner for discharge has been rejected is not sustainable in the eye of law.

5. To substantiate their submissions, they submit that the prosecution has been started on the same set of facts as those of the departmental proceeding in which the petitioner stands exonerated after the order of the Writ and L.P.A. Courts. They further submit that the standard of proof in departmental proceeding is just preponderance of probability, whereas the standard of proof in criminal trial is much higher as the prosecution is required to prove the charge by proof beyond

reasonable doubts and if the state has failed to meet the standard of preponderance of probability in the departmental proceeding, there is no question of the state to prove its case beyond reasonable doubt in criminal trial. Hence, the outcome of the criminal trial against the petitioner is foregone conclusion and hence, subjecting the petitioner at the fag end of his life to such criminal proceeding would be highly unfair. They also refer to and rely upon the following judgments:-

(i) **Ashoo Surendranath Tewari vs. CBI, (2020) 9 SCC 636**

(ii) **Radheshyam Kejriwal vs. State of W.B., (2011) 3 SCC 581**

6. However, learned counsel for the Vigilance Department vehemently supports the impugned order submitting that the present petition has become infructuous in view of the change of the stage in the criminal proceeding against the petitioner. Charge has already been framed and evidence is being adduced by the Vigilance Department against the petitioner.

7. He further submits that the petitioner has not been exonerated by learned writ Court on merit. Only on technicality the writ Court has set aside the inquiry report and order of punishment. He also submits that in LPA, this court has clarified that the state government is not debarred from proceeding

further from the stage of service of charge memo, meaning thereby that the exoneration of the petitioner by learned writ Court is only temporary and he may be found guilty in a fresh inquiry. Hence, he cannot take benefit of the order of learned writ Court.

8. By way of reply, learned Amicus Curiae and learned counsel for the petitioner submit that the writ Court has discussed the merit of the case threadbare and found that despite persistent demand of the petitioner for documents on which the State Government had relied in the support of the allegation was not supplied and hence, the finding of the inquiry report was found to be perverse. They further submit that despite clarification by LPA Court that the State Government could proceed from the stage of chargesheet/charge memo, the State Government has not preferred to proceed for further inquiry till date even after passage of about 16 years, which means that the setting aside of the inquiry report and punishment order by learned writ Court and upheld by learned L.P.A. Court has become absolute and the petitioner stands exonerated of the charge on merit.

9. He also submits that by change of stage in the Court below does not render the proceeding filed under Section

482 Cr. PC before this Court infructuous. He refers to and relies upon **Md. Nausad Khan and Ors. Vs. State of Bihar and Anr.** [2023 SCC Online Pat 9587, III (2024) DMC 55 (DB) (Pat), 2024 (4) BLJ 202, MANU/BH/2037/2023].

10. I gave thoughtful consideration to the rival submissions of the parties and perused the materials on record.

11. There is no dispute that there is identical allegation against the petitioner in departmental proceeding as well as in the criminal prosecution. The petitioner has been alleged to have made illegal appointments of 15 persons while holding the post of Superintending Engineer in Public Health Engineering Department, Bihar. It is also not in dispute that the inquiry report dated 24.07.2000 finding the petitioner guilty in departmental proceeding and the consequent order of punishment dated 30.11.2000 have been set aside by learned Writ Court in C.W.J.C. No. 13390 of 2000 dated 24.07.2000 and the same has been upheld by learned L.P.A. Court vide order dated 26.11.2008 in L.P.A. No. 687 of 2008, giving liberty to the prosecution to proceed with the disciplinary inquiry against the petitioner from the stage of service of charge memo dated 08.05.2000. However, the claim of the petitioner that even after lapse of 16 years, the disciplinary authority has not proceeded

with disciplinary inquiry in terms of learned L.P.A. Court. It is also on record that the petitioner has superannuated about 26 years back on 31.01.1998.

12. As such, it is not a case of the prosecution that it has proceeded afresh with the disciplinary inquiry from the stage of charge memo dated 08.05.2000. As such, exoneration of the petitioner in departmental proceeding in terms of learned writ Court and as upheld by learned L.P.A. Court becomes absolute. It is also found that learned writ Court has held the finding of guilt of the petitioner in the departmental proceeding as perverse for want of any documents having been adduced in the departmental proceeding in support of the allegation of illegal appointments of 15 persons.

13. As such, I find that exoneration of the petitioner in the departmental proceeding is on merit and not on the basis of any technicality.

14. Now it goes without saying that standard of proof in departmental proceeding is only a preponderance of probability, whereas in the criminal proceeding, the prosecution is required to prove the charge against the petitioner beyond all reasonable doubts. Hence, the standard of proof in criminal proceeding is much higher than that of departmental proceeding.

If the prosecution has failed to prove its charge as per the standard of preponderance of probability, needless to say that the prosecution is found to fail to prove its charge in criminal proceeding beyond all reasonable doubts against the petitioner. In such situation, subjecting the petitioner at the fag end of his life to criminal proceeding is futile exercise and abuse of the process of Court.

15. The aforesaid opinion of this Court finds sustenance from **Radheshyam Kejriwal case (Supra),** wherein Hon'ble Apex Court, after referring to several precedents, has held as follows:-

> "**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;
>
> (*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.
> **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."
>
> (Emphasis Supplied)

16. The ratio of **Radheshyam Kejriwal case (supra)** has been also followed by Hon'ble Supreme Court in **Ashoo Surendranath Tewari case (supra)** to discharge the accused, holding as follows:-

> "**15.** Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22-12-2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment [*Ashoo Surendranath Tewari* v. *CBI*, 2014 SCC OnLine Bom 5042] of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code."

17. Similar view has been also held by Delhi High Court in **Subhash Sharma Vs. Govt. of NCT (2024 SCC OnLine Del 3762** holding as follows:-

> **"26.** The legal position that emerges is that if an accused has been exonerated and held innocent in the disciplinary proceedings after the allegations have been found to be unsustainable, then the criminal prosecution premised on the same set of allegations cannot be permitted to continue. The reasoning for this recourse

articulated in above decisions is that the standard of proof in criminal cases is 'beyond reasonable doubt' which is far higher than 'preponderance of probability', the standard of proof required in disciplinary proceedings. In case the lower threshold could not be met in the disciplinary proceeding, there is no purpose in prosecuting the criminal proceedings where the standard of proof required to establish the guilt is higher.

27. The reliability and genuineness of the allegations against the petitioner has already been tested during the disciplinary proceedings and the petitioner has been exonerated of such allegations. As noted above, the findings of the Inquiry Officer, the Disciplinary Authority as well as of the UPSC on the charge contained in Article-I which is identical to the allegations in the criminal case arising out of FIR No. 55/2014, are concurrent. In this backdrop the present case can undisputedly be brought under sub-paras (3) read with sub-paras (5) of para 102 of *Bhajan Lal* (supra).

28. Keeping in perspective the above discussion, the present case is a fit case which warrants exercising of inherent powers by this Court under Section 482 CrPC for quashing of FIR and the subsequent criminal proceedings.

29. Accordingly, the present petition is allowed and consequently, the FIR No. 55/2014 dated 11.07.2014 registered at PS ACB, New Delhi under Sections 7/13 of the Prevention of Corruption Act, 1988 alongwith all other proceedings emanating therefrom, is quashed."

18. Coming to the submission of learned counsel for the Vigilance Department that stage of the proceeding in the Court below has changed and hence, the present petition has become infructuous, it would be relevant to refer to **Md. Naushad Khan case (supra)**, wherein this Court has dealt with the issue in detail after referring to the following binding precedents:-

(i) **Mamta Shailesh Chandra Vs. State of Uttarakhand,** [2024 SCC OnLine SC 136]

(ii) **Abhishek Vs. State of Madhya Pradesh.,**
[AIR 2023 SC 4209]
(iii) **Thesima Begam Vs. State of T.N.,**
[(2020) 14 SCC 580]
(iv) **Anand Kumar Mohatta Vs. State (NCT of Delhi),**
(2019) 11 SCC 706
(v) **Joseph Salvaraj A. Vs. State of Gujarat,**
(2011) 7 SCC 59
(vi) **G. Sagar Suri v. State of U.P,**
(2000) 2 SCC 636
(vii) **Pepsi Foods Ltd. v. Special Judicial Magistrate,**
(1998) 5 SCC 749
(viii) **Ashok Chaturvedi Vs. Shitul H. Chanchani,**
(1998) 7 SCC 698
(ix) **Arun Shankar Shukla Vs. State of U.P.**
(1999) 6 SCC 146

19. After considering the aforesaid precedents, this Court has held as follows:-

> "**19.** As such, it emerges that the High Court continues to have power to entertain and act upon the petition filed under Sec 482 CrPC even after change in the stage of the trial. There is nothing in Sec 482 CrPC to restrict the exercise of power only so long as the stage of the proceeding as it was at the time of the petition continues to be the same. It would be travesty of justice to hold that the proceeding initiated against the person can not be interfered with when it reaches its next stage, even if interference is required to prevent the abuse of the process of the court and to meet the ends of justice. It would be grave injustice to subject the petitioner to the agony and travails of the criminal trial. Inherent power of High Court has been saved to advance justice and not to frustrate it.
>
> **20.** However, when the trial has reached the stage of judgment, it is not desirable to act upon the petition. After the judgment, the petitioner would have liberty to file appeal wherein he may raise all points of law and facts.
>
> **21.** As such, the submission on behalf of the State and the Informant that the present petition has become infructuous with change of the stage of the trial

> can not be accepted. This court is duty bound to entertain and act upon the petition even when the trial has reached the stage of prosecution evidence."

20. Hence, this Court is unable to agree with the submissions of learned counsel for the Vigilance Department that after change of the stage in the Court below, the present proceeding under Section 482 Cr.PC has become infructuous.

21. In view of the aforesaid facts and circumstances, I find that the impugned order is not sustainable in the eye of law. It is liable to be set aside under Section 482 Cr.PC to prevent the abuse of the process of the Court and to meet the ends of justice. The case is squarely covered by the guidelines as given by Hon'ble Apex Court in sub-paras 3 and 5 of Para 102 of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335**. The relevant para of **Bhajan Lal Case (supra)** reads as follows:-

> **"102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive

list of myriad kinds of cases wherein such power should be exercised.

…….

(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.

…….

(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.

……"

22. Accordingly, the present petition is allowed. The impugned order dated 01.07.2016, passed by learned Special Judge, Vigilance-Ist, Patna is set aside arising out Special Case No. 07 of 1999, and the petitioner is discharged. The whole proceeding arising out of the Special Case No. 07 of 1999 stands quashed.

(Jitendra Kumar, J)

Shoaib/Ramesh

AFR/NAFR	AFR
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