

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.49461 of 2023**

Arising Out of PS. Case No.-17 Year-2017 Thana- ECONOMIC OFFENCES, BIHAR  
District- Patna

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AMITABH KUMAR SON OF LATE SHIV KUMAR SINGH RESIDENT  
OF VILLAGE - KOPWAN, P.S. - KORAN SARAI, DISTRICT - BUXAR

... .. Petitioner/s

Versus

THE STATE OF BIHAR THROUGH ECONOMIC OFFENCE UNIT,  
PATNA BIHAR, PATNA

... .. Opposite Party/s

=====

**Appearance :**

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv  
: Mr. Hemant Kumar, Adv  
: Mrs. Shristi Singh, Adv  
For the Opposite Party/s : Mr. Vishwanath Pd. Sinha, APP  
For the EOU : Mr. Rana Vikram Singh, Adv

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
CAV JUDGMENT**

**Date : 14-07-2025**

Heard learned senior counsel for the petitioner  
and learned counsel for the respondents.

**2.** The present petition has been preferred under Section 482 of the Code of Criminal Procedure (in short Cr.P.C.) to quash the order dated 17.03.2023 passed in Special Case No. 353 of 2017, arising out of EOU P.S. Case No. 17 of 2017, where learned Special Judge Vigilance, Patna, took cognizance for the offence punishable under Section 13(1)(e) of the Prevention of Corruption Act, 1988.

**3.** The prosecution story as it appears from the written report of Dy.S.P cum Investigating Officer, Economic Offence Unit, Patna, is that upon secret information received



by the informant, it came to light that petitioner Amitabh Kumar, who is at present a Motor Vehicle Inspector (in short MVI) and posted at Shoehar, has embezzled huge amounts of money and assets illegally by misusing his post and power, when he was posted as MVI in Patna. The investigating period (check period) of this case is from 09.07.2011 to 17.11.2017. It is further alleged that, during the course of prima-facie investigation, the informant discovered that the total legitimate income of the petitioner, Amitabh Kumar, amounted to Rs. 28,18,789/-, whereas his total expenditure was assessed at Rs. 6,69,259/-. It has also been alleged in the FIR that the cumulative value of his movable and immovable assets stood at Rs. 49,69,981/-. It was further alleged in the FIR that during the tenure of his services from 09.07.2011 to 17.11.2017, he was involved in illegal means and practices to acquire assets disproportionately to their valid sources of income to the tune of Rs. 28,20,451/-. Consequently, the present case was instituted.

**Argument on behalf of petitioner**

4. Mr. Y.V. Giri, learned senior counsel,



appearing on behalf of the petitioner submitted that the prosecution filed the FIR without conducting any preliminary inquiry, and if the Economic Offences Unit (EOU) had conducted such an inquiry, it would have been evident that no Disproportionate Assets (DA) case was made out against the petitioner. It is also submitted that the FIR appears to be lodged falsely to justify the prosecution's actions and to shield their misconduct, resulting in charge-sheet submission without material evidence. It is also submitted that the petitioner was unnecessarily implicated, and the investigation was not conducted properly. The Investigating Officer (I.O.) ignored several key facts that would have established the petitioner's innocence. It is submitted that income from valid sources, including the petitioner's and his wife's earnings, was also not adequately considered.

**5.** Mr. Giri, further submitted that I.O. incorrectly calculated the petitioner's income as only Rs. 33,15,293/-, whereas the petitioner had earned Rs. 46,10,409/- from salary, rental, and agricultural sources, as evident from his income tax returns. Similarly, the I.O. deliberately excluded



the documented income of the petitioner's wife. It is further submitted that the prosecution wrongly considered household goods and ancestral ornaments from the petitioner's house as self-acquired property. However, no immovable property was acquired by the petitioner or his wife during the check period, and all assets were ancestral and jointly held by family. It is submitted that the petitioner is not the owner of these items, and the departmental inquiry officer, considering these facts, found the petitioner not guilty. Both the departmental charges and allegation raised through FIR are based on the same facts *qua* disproportionate assets.

**6.** It is further submitted that the I.O., without awaiting the official verification of the petitioner's agricultural income proceeded to file the charge-sheet on 17.11.2022, thereby demonstrating a biased and precipitate approach to implicate the petitioner. It is pertinent to note that the petitioner was subjected to departmental proceedings on identical allegations and was duly exonerated upon conclusion of the inquiry conducted in accordance with law. An official order dated 02.06.2023 confirmed the failure to prove the



charges even on the basis of probability. It is also submitted that the Inquiry Officer, i.e., the Regional Transport Authority, Patna, thoroughly examined the matter and, after giving the department a fair opportunity, concluded that the allegation was baseless.

**7.** It is also submitted that the charge-sheet filed by EOU is premised on presumptive valuations of household articles and jewellery purportedly located at the petitioners ancestral residence, without any concrete evidence or proper valuation conducted by a competent authority. However, it is submitted that the Economic Offence Unit (EOU), neither possesses any documentary evidence nor has adduced any oral testimony to establish a nexus between the said properties and the petitioner. As such, the inclusion of these assets in the petitioner's name for the purpose of computing the alleged disproportionate assets is wholly arbitrary, unjustified and legally unsustainable.

**8.** It is further submitted that the case was instituted without conducting any preliminary inquiry. The petitioner was not found in possession of any movable or



immovable property in his name. This indicates that the EOU, driven by a vindictive attitude, filed a baseless FIR and later submitted a charge-sheet by including ancestral properties to justify it. It is also evident that before passing the final order, which is annexed as (annexure-4), the petitioner's department reviewed all evidence from the departmental proceedings as well as the criminal case, i.e., E.O.U P.S. Case No. 17/2017. Upon due consideration and after a comprehensive enquiry, the departmental authorities arrived at the conclusion that the allegation regarding possession of disproportionate assets beyond the petitioner's known sources of income remained unsubstantiated and, therefore, could not be established.

**9.** Mr. Giri, while arguing on behalf of the petitioner submitted that the only issue for consideration in the present case is whether criminal prosecution can continue when the accused has been exonerated in the departmental proceeding. In support of his submission learned senior counsel relied upon the legal report of the Hon'ble Supreme Court as available through **Ashoo Surendranath Tewari**



**Vs. Deputy Superintendent of Police, EOW, CBI & Another** as reported through **[(2020) 9 SCC 636]**, wherein it has been held that when the accused is exonerated in the departmental proceeding, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue. For the reasons that the standard of proof in the departmental proceedings, being based on preponderance of probability, is a lesser standard of proof qua criminal proceeding where the case has to be proved beyond all reasonable doubt.

**10.** It is submitted by Mr. Giri that similarly in the case of **P.S. Rajya Vs. State of Bihar, [(1996) 9 SCC 1] & Radheshyam Kejriwal Vs. State of West Bengal & Another, [(2011) 3 SCC 581]**, the Hon'ble Supreme Court held that when the identical charge could not be established in a departmental proceeding, nothing remains to proceed against the accused in a criminal proceeding. By applying the legal principles enunciated in the aforementioned judicial pronouncements, it is evident that, in the present case a perusal of the memo of charge issued in the departmental



proceedings reveals that the charge levelled therein is identical, *qua* allegation of accumulation of assets disproportionate to the known sources of income. In the enquiry report, the income of the petitioner from all sources was found to be significantly more than what was mentioned in the FIR/charge-sheet. Therefore, also even the wealth of Rs. 58,31,702/- considered in the charge-sheet to be disproportionate appears lesser than the income assessed as Rs. 75,18,338/- in the departmental proceedings. Accordingly, nothing remains to continue with the present criminal proceeding.

**11.** It is further submitted by Mr. Giri that recently, the Hon'ble Supreme Court in the case of **Nirankar Nath Pandey Vs. The State of U.P. & Others, Criminal Appeal No. 5009 of 2024**, has relied upon tax returns of the public servant and his wife's, which were neither contested to be forged nor fabricated, like in the present case, and thereafter, considering the same, quashed the proceedings. Besides the aforesaid, it is submitted that no disproportionate immovable property has been found against



petitioner as per charge-sheet dated 07.11.2022. It is pointed out that the value of household articles and ornaments which said to be recovered from the joint family ancestral residence has been erroneously treated as the petitioner's self-acquired property, despite the fact the residence is jointly owned and occupied by the petitioner along with his three brothers. It is submitted that without considering the agricultural income, for which request was also made by I.O. to the Circle Officer, Buxar the charge-sheet against the petitioner was filed.

**12.** While concluding his argument Mr. Giri, submitted that there is no special or incriminating material in the case record against the petitioner. However, learned Trial Court took cognizance, without proper and just appreciation of materials available on record and by proceeding mechanically committed a legal error.

**Argument on behalf of E.O.U.**

**13.** Mr. Rana Vikram Singh, learned counsel for EOU submitted that a preliminary enquiry was initiated based on secret information by the Additional Superintendent of



Police, Economic Offences Unit, Bihar, from 14.09.2017 to 17.11.2017, against the petitioner, who is a Motor Vehicle Inspector (MVI), suspected of amassing assets disproportionate to his known sources of income. Following which, an FIR was registered as EOU P.S. Case No. 17 of 2017 on 17.11.2017, alleging that the petitioner created disproportionate assets amounting to Rs. 28,20,451.33/-.

**14.** It is further submitted by learned counsel that as per FIR, petitioner had an income of Rs. 28,18,789/- and expenses of Rs. 6,69,259.33/-, leading to savings of Rs. 21,49,529.67/-. The movable assets observed were Rs. 49,69,981/- and thus the disproportionate amount was calculated as Rs. 28,20,451.33/-. It was also found that several assets were acquired in the name of the petitioner's wife without proper justification, indicating her alleged abetment. It is further submitted that on 18.11.2017, a search was conducted at the petitioner's house and flat, where gold jewellery and other valuables were not seized, but their value was quantified, revealing that total movable assets stood at Rs. 67,01,006/-. The immovable property in the



petitioner's name was reportedly nil.

**15.** It is also submitted that after thorough investigation, a charge-sheet was filed on 07.11.2022 and the amount of disproportionate assets was revised upward to Rs. 58,31,702/- with an increase of 175.9% from the estimate of FIR. This was attributed to the discovery of additional assets for which the petitioner allegedly had no explanation. The total income for the check period (09.07.2011 to 17.11.2017) was assessed at Rs. 33,15,293/- and total expenses at Rs. 32,12,278/-.

**16.** It is further submitted that the departmental proceeding was instituted solely on the basis of the initial figure of Rs. 28,20,451.33/- reflected in the FIR. The petitioner was exonerated on 03.06.2023, with the Disciplinary Authority saying that his income on the date of the FIR was Rs. 75,18,338/- and expenses were Rs. 56,39,240/- thus not exceeding his known income. However, the order is lacking a correct factual incorporation, where no representative from the Investigating Department was examined in the departmental proceeding.



**17.** It is further submitted that exoneration in departmental proceedings does not automatically translate into exoneration in a criminal case. This principle is well-established and supported by case law from the Hon'ble Supreme Court. It is also submitted that the departmental inquiry failed to produce any witnesses to prove the allegations against the petitioner. The inquiry report and the exoneration order in the departmental proceeding are not suitable grounds to halt or interfere with the ongoing criminal proceeding. The departmental proceedings were found lacking in proper evidentiary backing, particularly since no witnesses were called from the Economic Offences Unit, despite the availability of relevant materials gathered during the investigation.

**18.** It is also submitted that the petitioner joined government service on 9th July 2011 and his immovable property was 'nil'. The movable assets, including combined bank balances of the petitioner and his wife, Neetu Singh (married on 28th May 2013), were assessed to be Rs. 7,66,289/-. On 17th November 2017, the petitioner still



owned no immovable property. However, it is submitted that pursuant to the search and seizure operation conducted on 18<sup>th</sup> November, 2017, the value of movable assets, including gold jewellery which was not seized, but merely assessed, was estimated for Rs. 67,01,006/-. The petitioner's total income from all sources was Rs. 33,15,293/-, and total expenses was Rs. 32,12,278/-. Notwithstanding the aforementioned valuations, the investigation purportedly determined that the petitioner was in possession of disproportionate assets amounting to Rs. 58,31,702/- indicating a disparity of 175.9% in excess over his known source of income.

**19.** Mr. Rana Vikram Singh, learned counsel for EOU, further submitted that the petitioner was exonerated in the present case from the departmental proceeding only considering the Income Tax Returns (in short ITR). It is submitted that filing a tax return is something different, but possessing property disproportionate to the income in the case of a public servant is something different. It is submitted that the charge of corruption, specifically pertaining to the manner in which the petitioner allegedly acquired the assets in



question, does not appear to have been framed in the departmental proceedings. Accordingly, it cannot be contended that the petitioner was exonerated in the departmental proceedings on the same set of facts and circumstances which now form the basis of the present criminal prosecution initiated against him for the alleged acquisition of disproportionate assets. In support of his submission, Mr. Singh relied upon the legal report of the Hon'ble Supreme Court as available through **State Vs. Ajay Kumar Tyagi, [(2012) 9 SCC 685] & C.B.I. Vs. Thomnandru Hannah Vijayalakshmi, [(2021) 18 SCC 135]**, where the Hon'ble Supreme Court was pleased to dismiss the plea of the petitioner to quash the proceeding on the ground of income tax return. Mr. Singh also relied upon the legal reports of the Hon'ble Supreme Court as available through **Puneet Sabhrawal Vs. C.B.I., [2024 SCC OnLine SC 324] & A.P. Electrical Equipment Corporation Vs. Tahsildar and Others, [2025 SCC OnLine SC 447]**.

20. While concluding his argument, Mr. Rana



Vikram Singh, submitted that the criminal case is currently at the cognizance stage, where charges are yet to be framed by the Learned Special Judge. The State argues that it is premature and baseless to seek comparison between departmental charges and criminal charges at this stage. The petitioner's earlier petition seeking quashing of the FIR, bearing Cr.W.J.C. No. 1170 of 2022, was dismissed by one of the learned Co-ordinate bench of this Court, vide order dated 04.05.2023.

**21.** Contrary to the aforesaid submission of Mr. Singh, Mr. Giri further submitted that the ratio of **Ajay Kumar Tyagi Case (supra)** is not applicable to the present case for the reason that in the **Ajay Tyagi Case (supra)** the petitioner was not exonerated in the departmental proceedings, and the same was challenged on the basis of the enquiry report received in the departmental proceedings, where no final order was passed by the disciplinary authority. It is also submitted by Mr. Giri that even the ratio of **Vijayalakshmi Case (supra)** is not applicable in this case because the cases on which the petitioner is relying upon, like



**Ashoo Surendranath Tewari Case (supra) , P.S. Rajya Case (supra) & Radheshyam Kejriwal Case (supra)** were neither considered nor referred to in **Vijayalakshmi Case (supra)**. It is further submitted by Mr. Giri that in the **Puneet Sabhrawal Case (supra)** charges were framed in the provision of the Prevention of Corruption Act, 1988, where the Income Tax Appellate Tribunal did not find any liability of the appellants on the income tax front, where the quashing was prayed that as the Income Tax Appellate Tribunal had passed an order to the effect of not finding any liability of the appellants, therefore, proceedings before the Tribunal, which were based on the search conducted by the CBI, should not proceed with the criminal trial, where reliance was also placed on the **Radheshyam Kejriwal Case (supra) & Ashoo Surendranath Tiwari Case (supra)**.

22. It is pointed out that in the **Puneet Sabhrawal Case (supra)**, the Hon'ble Supreme Court said that the consequence of income tax is not a criminal trial, though it conceded that the **Radheshyam Kejriwal Case (supra) & Ashoo Surendranath Tiwari Case (supra)**



were considered but not distinguished, and therefore, these two cases still govern the field.

**23.** On the basis of the aforesaid submission as canvassed by learned counsel for the parties, in the present factual scenario, this Court finds that the following issues are primal issues that require judicial determination, which are as under:-

**(a).** Whether exoneration in departmental proceedings merely on the basis of income tax would *ipso-facto* be a sufficient ground for quashing the criminal prosecution in connection with corruption cases ?

**(b).** Whether an income tax return alone is sufficient material to dispel the allegation of disproportionate assets ?

**(c).** Whether a criminal prosecution in a matter of corruption could be quashed merely on the basis of an income tax return ?

**(d).** Whether exoneration from departmental proceeding without considering the evidence



collected in the course of investigation in a matter of corruption related to disproportionate assets may said considering the exoneration on similar facts and circumstances ?

**24.** It would be apposite to reproduce the para nos. 35 of the **A.P. Electrical Equipment Corporation Case (supra)**, which reads as under :-

**35.** If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in *Quinn v. Leathern*, [1901] A.C. 495 and reiterated by the Privy Council in *Punjab Cooperative Bank Ltd. v. Commr. of Income Tax*, Lahore AIR 1940 PC 230:

*“..... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there,*



*are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found.”* and follow that decision whose facts appear more in accord with those of the case at hand.

**25.** It would be apposite to reproduce the para no. 8 to 13 of the **Ashoo Surendranath Tewari Case (supra)**, which reads as under :-

**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 submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.”

**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 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;

(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.”

**26.** It would be apposite to reproduce the para nos. 8 to 9 of the **Nirankar Nath Pandey Case (supra)**, which reads as under :-

**8.** The Appellant has declared his and his wife's assets consequent to notice dated 25.08.2020. It is stated that the wife of the Appellant is also earning from teaching yoga, agriculture, and from receiving house rent. It is submitted that the Appellant's total income since 1996 to 2020 is Rs.75,73,676/- (Seventy-Five Lakh Seventy-Three Thousand Six Hundred Seventy Six only) and the income of his wife during the aforesaid period is about Rs.41,67,592/- (Rupees Forty One Lakh Sixty Seven Thousand Five Hundred Ninety



Two only). These declarations are supported by the relevant income tax returns. The ornaments of the Appellant's wife have been sold for an amount of Rs.2,16,000/- (Rupees Two Lakh Sixteen Thousand only) and the Appellant received Rs.1,00,000/- (Rupees One Lakh only) from a Life Insurance Policy plus there is an amount of Rs.49,000/- (Rupees Forty Nine Thousand only) that was given to the Appellant by his father. Therefore, the total income and assets of the Appellant and his wife has been submitted to be Rs.1,21,06,268/- (Rupees One Crore Twenty One Lakh Six Thousand Two Hundred Sixty Eight only) during the period of 1996 to June 2020. Further, the Appellant has explained and submitted documents regarding the properties owned by him and his wife and a loan given by the Bank. This has not been considered by the Uttar Pradesh Vigilance Department. The present FIR is lodged on the basis of the Uttar Pradesh Vigilance Establishment prima facie finding the Appellant guilty. However, if we consider the declared assets of the Appellant and his wife for the aforesaid period it comes up to Rs.1,21,06,268/-



(Rupees One Crore Twenty One Lakh Six Thousand Two Hundred Sixty Eight only). The present FIR states the disproportionate assets to be Rs.1,16,02,669/- (Rupees One Crore Sixteen Lakh Two Thousand Six Hundred Sixty Nine only) for the same period.

**9.** We are of the view that the Appellant's wife's income must be considered as well while calculating the total income and assets. Both the Appellant and his wife have filed the relevant income tax returns in order to show their respective incomes and assets. The Respondents in their Counter-Affidavit have not denied these income tax returns or alleged them to be forged or fabricated. Therefore, when a public servant is submitting his income tax returns, they should be presumed to be true and correct. If you duly consider the income tax returns of the Appellant and his wife for the check period of the year 1996-2020, the total income is coming up to be Rs.1,21,06,268/- (Rupees One Crore Twenty One Lakh Six Thousand Two Hundred Sixty Eight only) which is in fact more than the assets



amounting to Rs.1,16,02,669/- (Rupees One Crore Sixteen Lakh Two Thousand Six Hundred Sixty Nine only) which is said to be the disproportionate assets in question under the present FIR.

**27.** It would be apposite to reproduce the para nos. 19 and 20 of the **Ajay Kumar Tyagi Case (supra)**, which reads as under :-

19. Even at the cost of repetition, we hasten to add that none of the heads in *P.S. Rajya* [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] is in relation to the effect of exoneration in the departmental proceedings on criminal prosecution on identical charge. The decision in *P.S. Rajya* [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , 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.

**20.** 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* [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , 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 para 23 of the judgment, which reads as follows: (SCC p. 9)

“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 [*P.S. Rajya v. State of Bihar*, Criminal Appeal No. 434 of 1996, order dated 27-3-1996 (SC)] for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

(emphasis supplied)

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.

### **Discussion & Conclusion:-**

**28.** To understand the core issue, it would be apposite to reproduce F.I.R. and impugned order dated 17.03.2023, which is as under :-

सेवा में,

पुलिस अधीक्षक,  
आर्थिक अपराध इकाई,  
बिहार, पटना।

विषय:- प्राथमिकी दर्ज करने के संबंध में।

महाशय,

उपर्युक्त विषय के संबंध में सादर सूचित करना है कि गोपनीय सूचना मिली थी कि श्री अमिताभ कुमार, पिता-स्व0 षिवकुमार सिंह, मोटरयान निरीक्षक के पद पर वर्तमान में षिवहर में पदस्थापित है। इनके विरुद्ध ज्ञात स्रोतों से अधिक



आय से अधिक सम्पत्ति अर्जित करने की बात सामने आने पर मुझे गोपनीय जाँच कर प्रतिवेदन समर्पित करने का निर्देश दिया गया था। उक्त आलोक में अमिताभ कुमार के विरुद्ध गोपनीय जाँच की गई।

जाँच के क्रम में पता चला कि इनकी नियुक्ति दिनांक -09.07.2011 को मोटरयान निरीक्षक के रूप में हुई थी। वर्तमान में दिनांक-02.08.2017 में मोटरयान निरीक्षक के रूप में शिवहर में पदस्थापित हैं। इनके द्वारा अपने पटना की पदस्थापना अवधि में अपने ज्ञात वैध स्रोतों से प्राप्त आय के अतिरिक्त भ्रष्ट एवं नाजायज तरीके से स्वयं तथा परिजनों के नाम पर अकूत चल एवं अचल सम्पत्ति अर्जित किये हैं, जो इनके ज्ञात वैध आय से कई गुणा अधिक है। इनके परिवार में इनकी पत्नी भी है जिनके आय का कोई ज्ञात स्रोत नहीं पता चला है। इनका स्थायी घर ग्राम कोपवॉ थाना कोरान सराय जिला बक्सर है। वर्तमान में इनका परिवार आनंदपुरी, पटना में रह रहा है।

जाँच के क्रम में पता चला कि इनके द्वारा दिनांक 09.07.2011 से अबतक लगभग 20,07,778/- रुपया वेतन से प्राप्त किया गया है। बीमा में परिवर्धता के बाद 1,25,000/- रुपया की राशि प्राप्त किया गया है। दिनांक 09.07.2011 को बैंकों में इनके नाम से कुल राशि 6,86,011/- जमा थी। इस प्रकार उक्त अवधि में इनके द्वारा लगभग 28,18,789/- रुपये की राशि अर्जित की गई है।

इनका वर्तमान में बैंक ऑफ इंडिया में दिनांक 07.08.2017 तक 64,625/- आंध्र बैंक में दिनांक -02.09.2017 तक 43,893/- पंजाब नेशनल बैंक में दिनांक 01.09.2017 तक 67,074/- भारतीय स्टेट बैंक में दिनांक 29.08.2017 तक 6,10,261/- रुपये की राशि जमा है, जबकि इनकी नियुक्ति की तिथि दिनांक - 09.07.2011 को इनके भारतीय स्टेट बैंक के खाता में 80,711/- बैंक ऑफ इंडिया के खाते में 5,26,136/- रुपया, पंजाब नेशनल बैंक के खाता में शून्य रुपया एवं आंध्र बैंक के खाता में 79,164/- रुपया जमा है, जबकि बैंक ऑफ इण्डिया से नियुक्ति की तिथि से अबतक 9,57,000/-, आंध्र बैंक में नियुक्ति की तिथि से



अबतक 2,80,000/- पंजाब नेशनल बैंक में नियुक्ति की तिथि से जबतक 49,500/- भारतीय स्टेट बैंक में नियुक्ति की तिथि से अबतक 16,37,000/- रुपये की राशि की निकासी की गई है। ये सभी निकासी 49,500/- या उससे अधिक की है। उक्त अवधि में एल0आई0सी0 के विभिन्न बीमा पॉलिसी में निवेश के रूप में कुल 12,60,628/- की राशि प्रीमियम के रूप में इनके द्वारा जमा किया गया है।

इस प्रकार उक्त अवधि में इनके आय-व्यव एवं परिसम्पत्ति की गणना निम्न प्रकार है:-

**अनुमानित आय:**

1. दिनांक 09.07.2011 से अबतक वेतन मद से प्राप्त आय — 20,07,778/-
2. दिनांक 09.07.2011 को बैंकों में जमा कुल राशि — 6,86,011/-
2. बीमा में परिपक्वता के बाद प्राप्त राशि — 1,25,000/-

**अनुमानित कुल आय** —

**28,18,789/-**

**अनुमानित व्यय**

1. वेतन मद से किचेन व्यय

(कुल वेतन से प्राप्त आय का एक तिहाई)

6,69,259.33/-

**अनुमानित कुल व्यय** —

**6,69,259.33/-**

**अनुमानित बचत** (28,18,789 — 6,69,259.33) = 21,49,529.

67/-

अनुमानित चल सम्पत्ति:- श्री अमिताभ कुमार के द्वारा वित्तीय वर्ष 2015-16 में अपनी आमदनी का ब्यौरा उपलब्ध कराया गया है। समर्पित सम्पत्ति का ब्यौरा एवं



अन्य सूत्रों से प्राप्त सूचना के अनुसार विभिन्न बैंकों में जमा/निकासी की गई राशि एवं भारतीय जीवन बीमा के विभिन्न पॉलिसियों में प्रीमियम के रूप में जमा की गई राशि का विवरण निम्न अनुसार पाया गया है:-

1	बैंक ऑफ इंडिया में जमा राशि	64,625 /-
2	आंध्रा बैंक में जमा राशि	43,893 /-
3	पंजाब नेशनल बैंक में जमा राशि	67,074 /-
4	भारतीय स्टेट बैंक में जमा राशि	6,10,261 /-
5	बैंक ऑफ इंडिया में नियुक्ति की तिथि से अबतक निकासी की गई राशि (49,500 /- रुपया या उससे अधिक)	9,57,000 /-
6	आंध्रा बैंक में नियुक्ति की तिथि से अबतक निकासी की गई राशि (49,500 /- रुपया या उससे अधिक)	2,80,000 /-
7	पंजाब नेशनल बैंक में नियुक्ति की तिथि से अबतक निकासी की गई राशि (49,500 /- रुपया या उससे अधिक)	49,500 /-
8	भारतीय स्टेट बैंक में नियुक्ति की तिथि से अबतक निकासी की गई राशि (49,500 /- रुपया या उससे अधिक)	16,37,000 /-
9	भारतीय जीवन बीमा निगम के विभिन्न पॉलिसियों में प्रीमियम के रूप में जमा राशि	12,60,628 /-
	<b>कुल</b>	<b>49,69,981 /-रु0</b>

अनुमानित चल सम्पत्ति

कुल

**49,69,981 /-रु0**

=

**49,69,981 /-रु0**

श्री अमिताभ कुमार के पास आय से अधिक सम्पत्ति = 49,69,981 /-रु0  
(चल एवं अचल सम्पत्ति) - 21,49,529.67 /- रु0 (अनुमानित बचत) =  
28,20,451.33 /- रु0 है।

इस प्रकार श्री अमिताभ कुमार की कुल सम्पत्ति उनके ज्ञात वैध स्रोतों से लगभग 28,20,451.33 /- रुपया अधिक पाई गई है जो उनके द्वारा अपने पद का दुरुपयोग कर नाजायज एवं भ्रष्ट तरीके से अर्जित की गयी है। यह भ्रष्टाचार



निरोध अधिनियम 1988 की धारा 13 (2) सह पठित धारा 13 (1) (ई) के तहत एक संज्ञेय अपराध है।

ह0 /—अस्पष्ट  
(सुषील कुमार)  
अपर पुलिस अधीक्षक,  
आर्थिक अपराध इकाई,  
बिहार, पटना।

### **Impugned Order**

**17.03.2023** Heard the prosecution on the point of cognizance and perused the case record.

The Investigating Officer has submitted charge sheet under Section 13(2) r/w Section 13(1)(e) amended Section 13(1)(b) of the PC Act 1988 and under Sections 109 of the IPC against the accused persons namely: (1) Amitabh Kumar and (2) Nitu Singh.

Perused the case record. On perusal of the FIR, charge sheet, case diary and sanction order, I find a prima facie case is made out against the accused Amitabh Kumar under Section 13(2) r/w Section 13(1)(e) of the PC Act 1988 and under Sections 109 and 120(B) of the IPC against the other accused Nitu Singh. There are sufficient materials available on record against both the above named accused persons to proceed further in this case under aforementioned Sections.

Accordingly, Cognizance of offence under Section 13(2) r/w Section 13(1)(e) of the PC Act 1988 is taken against the accused Amitabh Kumar and under Sections 109 and 120(B) of the IPC against the other accused Nitu Singh.



Since, both the accused persons namely; ((1) Amitabh Kumar and (2) Nitu Singh has not appeared upto now, hence, OC is directed to issue summon for their appearance. Put up on 01.05.2023 for appearance.

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**29.** It is clear from the aforesaid order that during departmental proceedings none of the officials from the E.O.U. who were engaged in carrying investigation of the present case and who collected materials in support of the allegation *qua* petitioner were called for. The main plea of petitioner/accused during the departmental proceeding was that his domestic items, jewellery, cash etc., are their ancestral property and income. The departmental proceeding is silent regarding the income of the wife of the petitioner, namely Smt. Nitu Singh, who claimed to have income from four different sources, i.e., **1. M/s. Dynamic Computer System, 2. M/s. Print Mark India Ltd., 3. M/s. Screen Bihar and 4. M/s. Radhika Ji Hanuman Ji Modern Rice Mill.** She claimed to get remuneration from Sr. No. 1 to 3 and earn from **M/s. Radhika Ji Hanuman Ji Modern Rice Mill** after selling the paddy/rice, and in support, there is no



documentary evidence with respect to the stock register/purchase register/sale register/transportation of paddy-rice, wages etc., for consideration. This fact was not considered while exonerating the petitioner during the departmental proceeding.

**30.** Smt. Nitu Singh filed her income tax return for the first time on 31.03.2014 for the financial year 2011-12. No income tax return was filed for the financial years of 2012-13 & 2013-14. However, the returns for the financial years 2014-15 & 2015-16 were filed with an interval of one day, i.e., 29.03.2017 and 30.03.2017. For the financial year 2016-17 (assessment year 2017-18), the income tax return was filed on 29.03.2018, showing inflated entries with respect to the transactions after the institution of the present FIR, which appears prima-facie to legalize the ill gotten assets of the petitioner.

**31.** As per the FIR during the check period, i.e., from 09.07.2011 to 17.11.2017 petitioner found the holder of seven different bank accounts, but during departmental proceedings, only three bank accounts were taken into



consideration. The whole basis for the petitioner's exoneration in the departmental proceedings appears to rest upon the filing of income tax returns for the financial years 2011-12 to 2017-18. However, the pertinent issue that arises for consideration before this Hon'ble Court is whether such exoneration in the departmental enquiry took into account the entirety of facts and circumstances as alleged and disclosed in the FIR. It is apparent from the FIR that the wife of petitioner Smt. Nitu Singh also implicated as co-accused, therefore, the income and assets of the wife of petitioner namely Nitu Singh must be taken into consideration to make the assets justified. While deciding departmental proceedings, if after considering all such **facts and circumstances**, the petitioner gets exonerated only in that case can it be said that if the case of the petitioner does not succeed based on preponderance of probability, then how can a criminal proceeding survive against him, which must be proved beyond reasonable doubt, as the facts of consideration for departmental proceedings appear completely different, therefore, this Court finds that the legal ratio as laid down in **Ashoo Surendranath Tewari**



**Case (supra)** is not applicable in the present case. **“Fact and circumstances”** as emphasized in **Ashoo Surendranath Tewari Case (supra)** is of a very wider meaning, and it cannot be narrowed down by any stretch of argument, particularly when the petitioner is facing allegations of corruption.

**32.** The Hon’ble Supreme Court categorically held in the case of **Puneet Sabhrawal Case (supra)**, where both **Radheshyam Kejriwal Case (supra) & Ashoo Surendranath Tewari Case (supra)** that the filing of ITR is something different. Therefore, this Court is also of the view that the filing of an income tax return is a matter of self-assessment, which cannot be the sole basis for the explanation as to absolve the criminal liability, when the charges are of corruption against a public servant.

**33.** Accordingly this Court answered in **“negative”** to the issues as formulated in paragraph no. 23 (a), (b) and (c).

**34.** The departmental proceedings against petitioner was initiated in view of E.O.U. P.S. Case No. 17 of



2017, therefore, this is also the duty of department to see the materials collected by investigating agency before dealing with departmental proceeding and without taking note of materials collected during the course of investigation, conclusion of departmental proceedings is only amounting to a parallel proceeding on the basis of which it cannot be said that same fact was considered, which was alleged through FIR as to import the basic principle of weighing evidence, if preponderance failed now proof of strict liability would survive, therefore, this Court is also of the view that without perusal of materials collected during investigation, exonerating petitioner from departmental proceeding is of no legal bearing qua criminal proceeding. Issue No. (d) of Para No. 24 of the judgment answered accordingly with the aforesaid positive note.

**35.** The Hon'ble Supreme Court in the matter of **A.P. Electrical Equipment Corp. Case (supra)** categorically held that if there are two decisions of the Hon'ble Supreme Court that appear to be mutually inconsistent it is incumbent upon the High Courts not to adopt



one while disregarding the other, but to strive to harmonize the decisions and accord due respect to both. Taking guiding note of the aforesaid observations of the Hon'ble Supreme Court this Court finds that in the present case, all factual aspects as alleged against the petitioner was not taken into consideration during departmental proceedings. Hence, in view of **Puneet Sabhrawal Case (supra)**, the exoneration of petitioner on the basis of income tax return only, cannot be said with certainty that case of prosecution would not survive during the trial.

**36.** In view of the aforesaid factual and legal discussion this Court finds that case of petitioner is close to **Puneet Sabhrawal Case (supra)** and same not appears to be covered by **Ashoo Surendranath Tewari Case (supra)**.

**37.** Upon perusal of the record, it appears that two enquiry reports against petitioner are available on record the first is dated 31.08.2020 and the second is dated 21.01.2023 wherein, both reports, charges were not proved against petitioner. The second enquiry was, in view of the direction of disciplinary authority. It also appears from report



that both enquiry reports were issued by different Enquiry Officers-cum-Regional Transport Officers, Patna.

**38.** Moreover, petitioner withdraw his Cr.W.J.C. No. 1170 of 2022, preferred on earlier occasion to quash the FIR, which was already dismissed on 04.05.2023 by one of the learned Co-ordinate Bench of this High Court.

**39.** Accordingly, this Court does not find any illegality in the order dated 17.03.2023 as passed by learned Special Judge Vigilance, Patna, in connection with Special Case No. 353 of 2017 arising out of E.O.U. P.S. Case No. 17 of 2017, and, therefore, the same does not require any interference by this Court.

**40.** Hence, the present quashing petition stands dismissed, being devoid of any merit.

**41.** Office is directed to sent a copy of this judgment to the learned Trial Court, forthwith.

**(Chandra Shekhar Jha, J.)**

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	17.04.2025
Uploading Date	14.07.2025
Transmission Date	14.07.2025

