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Court : Delhi

Decided On : Sep-08-2010

Judge : Shiv Narayan Dhingra, J.

Appeal No. : Criminal M.C. No.2796 of 2009 ; C.M. Appl.; No.9460 of 2009

Appellant : Avinash Kumar .

Respondent : State Thru, Cbi

Advocate for Def. : Mr. Harish Gulati, Adv.

Judgement :
1. Whether reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest? Yes.

ORDER

1. This petition has been filed by the petitioner for quashing of criminal trial pending in the court of Special Judge in C.C. No.71 of 2004. The ground taken by the petitioner is that on the same evidence which formed part of the criminal trial, departmental proceeding was initiated against the petitioner and the petitioner was exonerated by the department. It is further submitted that the report of Investigating Officer dated 21st March, 2007 was also considered by the inquiry

officer. In his report, the Investigating Officer had come to conclusion that there was no demand of illegal gratification of ` 5,000/- made by the petitioner and the petitioner had not accepted the money from M/s. Suntex Enterprises owned by Sh. R.S. Guleria. Even S.P., CBI while drawing conclusion to his report sent to the department concluded that case was not fit for launching prosecution for the reasons as under :- "The company which engaged the complainant to represent them has denied giving any money for bribing any officer. It is not clear as to why the cable which was sent to NTH on 18th May, 1994 was taken up by the accused to contact the complainant only on 13th July, 1994. In the conversation recorded through teletape immediately before proceeding to the spot of trap, there is no demand of bribe."

2. It is submitted by the petitioner that this court in Ajay Kumar Tyagi v. State; III (2008) DLT (Crl.) 788 had observed as under :-

"6. The settled law as noticed and summarised by this Court in Sunil Gulati v.R.K. Vohra, 145 2007 DLT 612 = IV (2007) DLT (Crl.) 859 = (2007) [1] JCC 220, is that where there is a complete exoneration on merits in the adjudication proceedings, the continuation of criminal proceedings on the same set of facts cannot be sustained. In Sunil Gulati's case (supra), A.K. Sikri, J. of this Court relying on the judgment of the Supreme Court in Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors., 127 (2006) DLT 747 (SC) I (2006) CCR 161 (SC) = II (2006) SLT 446 = 2006 (1) JCC 488 has held as under: 25. ...In fact, various cases of the Supreme Court, note whereof is taken above, deal with different situations. The principles which can be culled out from the aforesaid judgments, when all these judgments are read out harmoniously, would be the following:

(1) On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings one does not have to wait for the outcome of the adjudication proceedings as the two proceedings are independent in nature.

(2) The findings in the departmental proceedings would not amount to res judicata and initiation of criminal proceedings in these circumstances cannot be treated as

double jeopardy as they are not in the nature of ``prosecution'`.

(3) In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the Adjudicators/Assessing Authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal cases before the Criminal court by producing necessary evidence.

(4) In case of converse situation namely where the accused persons are exonerated by the Competent Authorities/Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused with criminal liability when it is stated in the departmental proceedings that ex-facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any act. From a perusal of the Sunil Gupta's case (supra), it is apparent that a distinction has been drawn

where exoneration in an adjudicating proceeding on a given set of facts and evidence is on merits vis-a-vis where exoneration in adjudicating proceeding is either not on merits or criminal proceeding is based upon different set of facts and evidence."

3. It is submitted that the present case was squarely covered by the judgment of this court in Ajay Kumar Tyagi's case (supra) and since the criminal prosecution was based on same set of facts, allegations and evidence which was before the adjudicating authority, this court should quash the F.I.R.

4. A perusal of the exoneration order relied upon by the petitioner shows that after the accused was caught in a trap case accepting ` 5,000/-, the accused was put under suspension on the advice of CBI and departmental proceedings were initiated. The departmental proceedings continued for quite long time as the inquiry officers were frequently changing. The inquiry report shows that a CBI inspector was appointed as presenting officer and the one reason for prolongation of the inquiry was failure on the part of CBI Inspector to remain present during inquiry on several occasions. Ultimately, the inquiry officer wrote a letter to CBI on 5th September, 2003 to ask the concerned CBI Inspector to make himself available before the inquiry. Instead of obliging the department by sending presenting officer to the department, CBI wrote to the department that it should appoint its own presenting officer. It seems that later on department appointed its own presenting officer.

5. The inquiry report also shows that the complainant was not fully examined in the inquiry as he did not turn up despite reminders. The C.O. was on leave and out of station at the time of submission, testing and reporting of the sample and no evidence in respect of trap etc., was recorded.

6. It is apparent that the inquiry report exonerating the petitioner was not given on the basis of evidence and merits and is based on presumption, conjunctures and surmises. Though this fact has been recorded in the inquiry report that the petitioner seems to have accepted the money of ` 5,000/- but no importance has been given to this aspect and as to what was the occasion for the petitioner to accept the money.

7. It is settled law that the departmental inquiry and the criminal trial are proceeding in two different spheres. The purpose of holding departmental inquiry is to initiate proceedings under service law or the service contract of the accused and to decide what action should be taken against the accused as far as his employment was concerned. While the purpose of criminal trial is to punish a man for the offence. There is no doubt that the standard of proof in criminal trial is much more stringent than the standard proof required in departmental inquiry but mere exoneration in departmental inquiry from charges framed by the department does not exonerate a person from the criminal trial. In State v. M. Krishna Mohan & Anr., AIR 2008 SC 368, the Supreme Court had observed that exoneration of an accused in departmental proceedings cannot lead to conclusion that he was not guilty for offence of commission wherefor he was charged. Moreover, in this case, the accused has been exonerated in a prolonged departmental inquiry for reasons other than merits or the evidence. The departmental proceeding would show that the witnesses were reluctant to appear, the presiding officer was not there. The proceedings were conducted half heartedly.

8. It is settled law that acquittal of an accused in a criminal court does not debar any employer from exercising powers in accordance with rules and regulations in force and to initiate departmental proceedings. A person acquitted can be held guilty under departmental proceedings and action can be taken by the department against the person. Similarly, even if a person is exonerated in departmental proceedings, the criminal trial would not be effected. The inquiry officer in departmental proceedings is normally a person who is not well-versed with law and the object of inquiry is only to see whether the person should remain in employment or not of the department. Normally inquiry officers do not have coercive power to force the appearance of witnesses, unless these powers have been specifically conferred by the Government on the inquiry officer.Whereas in criminal trial, presiding officer is a judge who has power to summon the witnesses and to take coercive action if the witnesses do not appear.

9. I, therefore, consider that mere exoneration in inquiry because of non-appearance of the witness and non-consideration of the material would not entitle the accused for quashing of F.I.R.

10. I find no force in this petition. The petition is hereby dismissed.

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