$~26

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 05.12.2024

\+ CRL.M.C. 2184/2021 & CRL.M.A. 14709/2021

AJIT KUMAR .....Petitioner

Through: Mr. Viraj R. Datar, Sr. Adv. with Ms. Meenal Duggal and Mr. Srikant Singh, Advs.

versus

STATE NCT OF DELHI AND ANR .....Respondents

Through: Mr. Utkarsh, APP for State with SI Akash Deep PS Kotwali

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present petition has been filed seeking quashing of FIR No.138/2012 under Sections 392/411/34 IPC registered at PS Kotwali.

2. The case of the prosecution is that the aforesaid FIR was registered on the statement of Sh. Pramod Kumar Yadav S/o Sh. Biru Yadav R/o Shashtri Park, Delhi alleging therein that accused Pramod Kumar S/o Dinesh Chand alongwith his associates snatched five packets containing *manik* stones from him. The complainant apprehended one accused i.e. Pramod Kumar on the spot alongwith one packet of *manik* stones but his associates ran away from the spot with four packets.

3. During investigation, one of the accused Gopal disclosed that he gave two packets of *manik* stone to the petitioner who was posted as Beat Constable at PS Kotwali through Inderjeet Singh. Later-on, one Sh. Rishi

Verma S/o Sh. Rajender Verma R/o Ansari Road, Darya Ganj, Delhi came to the police station on 06.07.2012 and handed over one packet with *manik* stone weighing 149 gms. He stated that the petitioner gave the said packet to him about 10-12 days ago and asked him to keep it with the assurance that he would collect the same within 2-3 hours but he had not collected it. This led to the registration of aforesaid FIR.

4. It is not in dispute that insofar as the petitioner is concerned, the allegations against him are only under Sections 411/34 IPC.

5. Later on, disciplinary proceedings were also initiated against the present petitioner. The departmental enquiry was initially entrusted to Inspector Neeraj Kumar and subsequently transferred to various other officers. Then, the departmental enquiry was marked to Inspector Sajjan Singh *vide* order number 284-287/HAP Br./6th Bn. DAP, dated 02.02.2016, who prepared the summary of allegations, list of witnesses and list of documents, which were served upon the present petitioner.

6. The petitioner did not admit the allegation and preferred to face the enquiry. Eventually, the departmental enquiry was marked to Inspector Gajraj Singh, who concluded the same after observing all usual formalities and submitted his findings concluding therein that the charge framed against the petitioner is not proved.

7. The disciplinary authority was not satisfied with the findings of the Enquiry Officer and issued a Disagreement Note and the same alongwith a copy of findings, were delivered to the petitioner *vide* office U.O. No. 682/HAP Br./6th Bn. DAP dated 01.03.2018 for submission of his written representation/reply, if any, against the Disagreement Note within a period

of 15 days from the date of its receipt.

8. The petitioner received the Disagreement Note alongwith the copy of findings, on 05.03.2018 and submitted his written representation within the stipulated period. The disciplinary authority *vide* its order dated 06.04.2018 agreed with the conclusion of the Enquiry Officer and exonerated the present petitioner from the charges levelled against him in the departmental enquiry and directed the departmental enquiry to be filed.

9. Mr. Viraj R. Datar, the learned senior counsel appearing on behalf of the petitioner submits that the charge in the departmental enquiry as well as the charge in the present case are identical and premised on the same set of facts. He submits that even the witness cited in the departmental enquiry and the witness cited in the present criminal case for proving the charge under sections 411/34 IPC against the present petitioner, is the same. To buttress the contention, he has invited attention of the court to the list of witnesses examined in the departmental enquiry. Mr. Datar has also handed over the list of witnesses which is part of the chargesheet filed by the police in the present case under Section 173 CrPC.

10. He submits that since the departmental enquiry eventually culminated into an order of exoneration, therefore, the present FIR ought to be quashed. Elaborating on his submission, he further submits that since the standard of proof in criminal case is 'beyond reasonable doubt' which is far higher than 'preponderance of probability', the standard of proof that is required to be shown in the disciplinary proceedings, therefore, no useful purpose will be served in prosecuting the criminal proceedings when the lower threshold of 'preponderance of probability' has not been met in the departmental

proceedings.

11. In support of his submission, he has placed reliance on the decision of Hon'ble Supreme Court in ***Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Anr., (2020) 9 SCC 636***, as well as, a decision of this Court in ***Subhash Sharma vs. Govt of NCT, Delhi & Ors., 2024 SCC OnLine Del 3762***.

12. I have heard the learned senior counsel appearing on behalf of the petitioner, as well as, learned APP for the State and have perused the record.

13. The short question which arises for the consideration of this Court in the present case is whether the proceedings arising out of FIR No.138/2012, which are premised on identical allegations on which disciplinary proceedings were initiated against the present petitioner, are liable to be quashed once the petitioner has been exonerated in the disciplinary proceedings.

14. To appreciate the controversy involved in the present petition it is imperative to examine the charge framed in the criminal case, as well as, the charge in the departmental proceedings in juxtaposition, which are as under:

Charge framed in the case FIR No. 138/2012	**Charge in the Departmental Inquiry**
I, Dinesh Kumar, MM-08 / Central / Delhi, do hereby charge you accused Ajeet Kumar S/o Ram Kumar aged about 48 years as under: *That on 07.06.2012 at about 5:30 p.m., at in front of Shop No.1660, Dariba Kalan, Chandni*	*I, Inspr. Gajraj Singh Meena, Enquiry Officer, Charge you Ct. Ajeet Kumar No. 3951/DAP (then 1656/N), (PIS No.28892362) that while you were posted at Police Station Kotwali a case vide FIR No. 138, dt. 07/06/2012 u/s 365/379/411/34 IPC, P.S. Kotwali*

Charge framed in the case FIR No. 138/2012	Charge in the Departmental Inquiry
Chowk, Delhi within the jurisdiction PS: Kotwali, a robbery of five packets of Manik belonging to complainant Pramod Yadav was committed and out of those robbed property you had kept some part of the property with Rishi Verma and told him that you would collect the same after two/three hours and thus you had received or retained the said property dishonestly knowingly or having reason to believe to be stolen property and hence thereby you have committed an offence punishable u/S 411 IPC and within my cognizance. I hereby direct you be tried by this court for the abovesaid charges.	*was registered on the statement of Sh. Pramod Yadav s/o Biru Yadav r/o E-115, Shastri Park, Delhi. He alleged that one Parmod Kumar along-with his associates snatched 05 packets containing 'Manik' stones from him. He apprehended one accused Parmod Kumar on the spot along-with one packet of 'Manik' stones but his associates ran away from the spot with four packets. During investigation, one of the accused namely Gopal disclosed that he gave two packets of 'Manik' stones to you Ct. Ajeet Kumar; Beat Constable of police station Kotwali through Sh. Inderjeet Singh. Later, on 06/07/12 one Sh. Rishi Verma s/o Rajender Prasad r/o 2/18, Ansari Road, Daryaganj, Delhi came to police station and handed over one packet containing 'Manik' stones, weighting 149 gms. He told in the police station that you Ct. Ajeet Kumar gave this packet to him about 10-12 days ago and asked him to keep it with him assuring that you would collect the same within 2-3 hours. But you did not collect it. You Ct. Ajeet Kumar No. 1656/N did not join the investigation and absented yourself vide DD No. 66-B, dt. 25/06/12, P. S. Kotwali without any intimation / permission of competent authority. You Ct. Ajeet Kumar were*

Charge framed in the case FIR No. 138/2012	Charge in the Departmental Inquiry
	placed under suspension vide order No. 8856-86/HAP/P-I/North, dated 27/06/12. On 08/08/12 accused Ct. Ajeet Kumar got anticipatory bail from the Court of Sh. A.K. Chawla, Distt. Judge and Addl. Session Judge, Tees Hazari Courts, Delhi. You reported back for duty in P.S. Kotwali vide DD No. 21-B, dated 13/08/12 after absenting himself for a period of 48 days, 13 hours and 20 minutes unauthorisedly. You were formally arrested in the above mentioned case on 22/08/12 and released on bail. *The above mentioned act on the part of you Ct. Ajeet Kumar No.3951/DAP (then 1656/N), PIS No. 28892362 amounts to gross misconduct and unbecoming of a police officer in the discharge of your duty being a member of discipline force. Hence, the same renders you liable to be punished under the provisions of Delhi Police (Punishment and Appeal) Rules – 1980 read with Section 21 of Delhi Police Act – 1978.*

15. A comparative reading of the charges levelled against the present petitioner in the departmental proceedings, as well as, the charge framed in the criminal proceedings, makes it is evident that they are essentially the same *viz.*,- the petitioner had retained some part of the stolen property

(packet of *manik* stone) after receiving the same from one of the co-accused.

16. A perusal of the list of witnesses, which forms part of the charge-sheet filed by the police under section 173 CrPC, shows that the prosecution has cited Rishi Verma as well as Inderjeet Singh as relevant witnesses insofar as allegations against the present petitioner are concerned. This position is also affirmed by the learned APP, on instructions from the IO who is present in the court. In the departmental enquiry, the department had examined various witnesses including main witness Rishi Verma as PW3. It is petitioner who examined witness Inderjeet Singh as DW1, who has been cited as witness by the prosecution in the criminal case. Thus, the main witnesses cited by the prosecution in the criminal case to prove the allegations against the present petitioner, were examined in the departmental enquiry as well.

17. Undisputedly, the Enquiry Officer, after sifting the relevant evidence on record, returned a finding that the charges levelled against the present petitioner have not been proved. The relevant part of the finding of the Enquiry Officer reads thus:

> *"**DISCUSSION OF EVIDENCE***
>
> *During the course of enquiry, I have examined six Prosecution Witnesses in support of the allegation levelled against Ct. Ajeet Kumar No.3951/DAP. All the witnesses were relevant, reliable and independent who produced various kind of record connected to this Departmental Enquiry. **PW-1** was a formal witness who produced the documentary evidence (posting of delinquent in P.S. Kotwali at the time of incident on 07/06/12). **PW-2** was also a formal witness and just produced documentary evidence i.e. Copy of FIR No. 138, dt. 07/06/12 u/s 356/379/411/34 IPC, P.S. Kotwali, North Distt., Delhi and*

arrest of delinquent in that case. ***PW-3*** *was a very important and main witness in this matter. He proved that the delinquent gave him a packet of Manik at his shop saying he found it lying there in the market and asked him to keep it with him and enquire if, it belongs to somebody. But the delinquent did not came back to take it. This PW stated that he deposited that packet in PS Kotwali when the delinquent did not come to collect it.* ***PW-4*** *proved that a case of snatching of packets of Manik was got registered at P.S. Kotwali vide FIR No. 138/12, one accused Pramod was got arrested in that case,* ***Rishi Verma (PW-3) deposited a packet of Manik in police station and told that the delinquent had given it to him for keeping it with him****, a seizure memo was prepared reg. that packet of Manik and Rishi Verma signed on it, the delinquent got anticipatory bail and was formally arrested in the above said case.* ***PW-5*** *proved that the delinquent was suspended in the above mentioned matter.* ***PW-6*** *proved the incident of dt. 07/06/12.*

All the above 6 PWs were relevant, reliable and independent and their testimony has lot of weight in this departmental enquiry. PWs-1, 2 and 5 were formal witnesses and just produced documentary evidence. ***PW-3 was the main witness this matter. He crystal clearly stated that on one day in June-2012, the delinquent came to his shop in the evening and handed one white colour packet to him saying he has found it lying in the market. He then asked him to keep it with him and enquire from the market if it belongs to somebody. But he did not came back to collect the packet after that day. Here it is very clear that the delinquent found a packet lying on the road and very selflessly took it to this PW and asked him to verify if it belongs to somebody. He has done no wrong here. Though he did not go to collect that packet or even did not enquire about it later on but it does not prove he has any criminal intention. It was a simple thing and may be possible it might have slipped from his mind. This PW, during cross examination, stated that when***

the delinquent gave him that packet it showed his honesty. *This PW also replied during cross examination that he had never asked/contacted the delinquent to take back that packet. Even this PW gave wrong answer during cross examination that no Seizure Memo was prepared reg. the packet he handed over to SHO Tyagi Ji of P.S. Kotwali and he even denied to have signed on any Seizure Memo. Why he told this white lie? The reason is only best known to him. From the statement of PW-4 it is clear that the Hon'ble Court granted anticipatory bail to delinquent and he was arrested formally only.* ***No evidence has surfaced against the delinquent during the course of enquiry. This shows that there is no evidence against the delinquent in this case and he was falsely implicated by the police to the reason only best known to them.***

The statements of DWs also could not be taken out of account. DW-1 proved that nobody gave him any packet of Manik to be delivered to Ct. Ajeet. He also denied that he knows any Gopal in Chandni Chowk. He also deposed that one police officer wrote something on a paper and got his signature on it. DW-2 proved that he had not given any packet to Sardar Inderjeet Singh (DW-1). He also deposed that he was beaten in the police station and police officer got his signature on a paper on which something was written already. He was semi literate hence, he could not read it. DW-3, who was also posted in P .S. K.otwali at the time of incident, proved that one Ct. Shokeen of P .S. K.otwali contacted him and told him that SHO has asked him to arrange some Maniks. He also showed him some sample and told him that the SHO had ordered to arrange the same type of Maniks. This DW took Ct. Shokeen to a Jewellery Shop from where Ct. Shokeen bought about 250 grams Maniks costing about Rs. 35000/-. (Copy of Bill is attached herewith for ready reference). ***The DWs are not related to or linked to the delinquent in any way. Hence, there is hardly any chance that they are tutored. No PW supported the prosecution case and in their statements never uttered a single word against the***

delinquent.

CONCLUSION:

After carefully going through the testimony of Prosecution Witnesses and other evidence/material adduced during the course of enquiry it is not proved that the delinquent Ct. Ajeet Kumar No. 3951/DAP, PIS No. 28892362 had done any criminal act. Hence, the charge leveled against him is not proved."

(emphasis supplied)

18. Likewise, the order of the disciplinary authority had also recorded a finding that no charge levelled against the petitioner in the departmental inquiry has been proved. Thus, the disciplinary authority concurred with the conclusion of the Enquiry Officer to exonerate the present petitioner. The relevant part of the order of the disciplinary authority exonerating the present petitioner reads thus:

"I have carefully gone through the findings of the E.O, Statements of witnesses, written representation of delinquent in response to disagreement note and other material brought on D.E file. The delinquent was also heard in O.R. on 03.04.20187. During the course of enquiry 06 PWs in support of the allegations leveled against delinquent Const. have been examined. PW-1, 2 & 5 were formal witnesses and just produced documentary evidence. ***PW-3 was the main witness in this matter. He crystal clearly stated that on one day in June 2012, the delinquent came to his shop in the evening and handed over one white colour packet to him by saying that he has found it lying in the market. He then asked him to keep it with him and enquire from the market if it belongs to somebody. But he did not came back to collect the same after that day. It is very clear here that the delinquent found a packet lying on the road and very selflessly took it to this PW and asked him to verify if it belongs to somebody. He has done nothing wrong here. Though, he did not go to collect***

the packet or even did not enquire about it later on, but it does not prove that he has any criminal intention. It was a simple thing and may be possible it might have slipped from his mind. This PW during the cross examination stated that when the delinquent gave him that packet it showed his honesty. This PW also replied during cross examination that he had never asked/contacted the delinquent to take back that packet. *Further, from the statement of PW-4, it is clear that the Hon'ble Court granted anticipatory bail to delinquent and he was arrested formally only.* ***No evidence has surfaced against the delinquent during the course of enquiry. Moreover, the statement of DWs also could not be taken out of account. DW-1 proved that nobody gave him any packet of Manik to be delivered to delinquent Const. Ajeet Kumar. He also denied that he knows any Gopal in Chandni Chowk. He also deposed that one police officer wrote something on a paper and got his signature on it. DW-2 proved that he not given any packet of Manik to Sardar Inderjeet Singh (DW-1). He also stated that one police officer got his signature on a paper on which something was already written.***

Keeping in view of above captioned facts and circumstances as well as considering the findings of E.O, representation of delinquent Const. against the disagreement note, it is proved that there is nothing adverse noticed against Const. Ajeet Kumar, No. 3951/DAP during the D.E proceeding. Therefore, I, Satyavir Katara, Dy. Commissioner of Police, 6th Bn. DAP, Delhi agreeing with the conclusion of Enquiry Officer exonerate Const. Ajeet Kumar, NO. 3951/DAP from the charge leveled against him in the departmental enquiry and the instant DE is hereby filed. However, the suspension period will be decided after the finalization of criminal case pending against him."

(emphasis supplied)

19. Since, it is not in dispute that the petitioner has been exonerated in the disciplinary proceedings from the charge which is essentially the same as

charge framed in the present case, therefore, the question that needs to be addressed is as to whether the present FIR can be quashed on the basis of the exoneration of the petitioner in the departmental proceedings.

20. The answer is not far to seek. This Court in ***Subhash Sharma vs. Govt of NCT, Delhi & Ors. 2024 SCC OnLine Del 3762*** relying on various decisions of the Hon'ble Supreme Court in ***P.S. Rajya Vs. State of Bihar, 1996 (9) SCC 1; Lokesh Kumar Jain Vs. State of Rajasthan (2013) 11 SCC 130*** and ***Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Anr., (2020) 9 SCC 636***, has taken a view that if an accused has been exonerated and held innocent in the departmental 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 justification for the same 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. The relevant paras of ***Subhash Sharma*** (supra) reads thus:

> *"20. In **P.S. Rajya** (supra), the appellant therein was exonerated of all the charges in the departmental inquiry conducted by the Central Vigilance Commission and the conclusion of exoneration was concurred by the Union Public Service Commission which led to the passing of final orders by the President in favour of the appellant. However, when the appellant moved the High Court under Section 482 CrPC for quashing the cognizance of the charge, the High Court dismissed the petition. The challenge was taken to the Supreme Court. In the given factual backdrop, the*

Hon'ble Supreme Court formulated the following question in paragraph 3 of the judgment, which reads as under:

> *"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."...*

21. Then the Hon'ble Supreme Court answered the above formulated question and quashed the criminal proceedings by observing thus:

> *"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. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings.…..…*
>
> *xxxx xxxx xxxx*
>
> *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[1] *for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."*

22. In ***Lokesh Kumar Jain*** *(supra), an FIR was registered against the appellant therein alleging financial irregularities and misappropriation of Rs.4,39,617/-. In departmental proceedings with identical charges, the appellant was exonerated on the ground that it was not clear as to who received the payments for various transactions as the original and carbon copies of bills were not available. In the criminal case, the police also made repeated oral requests and statutory notices under Section 91 CrPC but the department of the appellant could not provide the requisite incriminating documents. The police, therefore, submitted the final closure report to the Magistrate after five months of lodging of FIR. But the Magistrate upon submission of the complainant that he is ready to cooperate with the police and procure requisite documents, directed re-investigation under Section 156(3) CrPC. Thereafter, investigation remained pending for 12-13 years inspite of the appellant making request to the police authorities to complete the investigation. The appellant move the High Court under Section 482 CrPC seeking to quash the FIR lodged against him, but the High Court declined to quash the FIR. The Hon'ble Supreme Court allowed the appeal and quashed the criminal proceedings. Relying upon the decision of* ***PS Rajya*** *(supra), it was observed as under:*

"23. In P.S. Rajya v. State of Bihar, this Court noticed that the

[1]Vide order dated 27.03.1996, the Hon'ble Supreme Court allowed the appeal reserving the reasons to be given later, which were given vide judgment in P.S. Rajya (supra)

appellant was exonerated in the departmental proceeding in the light of report of the Central Vigilance Commission and concurred by the Union Public Service Commission. The criminal case was pending since long, in spite of the fact that the appellant was exonerated in the departmental proceeding for same charge.

24. Having regard to the aforesaid fact, this Court held that if the charges which are identical could not be established in the departmental proceedings, one wonders what is there further to proceed against the accused in criminal proceedings where standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in the departmental proceedings.

25.Having regard to the factual scenario, noted above, and for the reasons stated below, we are of the opinion that the present case of the appellant is one of the fit cases where the High Court should have exercised its power under Section 482 CrPC. It is not disputed by the respondent that the departmental proceeding was initiated against the appellant with regard to identical charges made in the FIR……

xxxx xxxx xxxx xxxx

28. ……..Considering the fact that delay in the present case is caused by the respondent, the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution is thereby violated and ***as the appellant has already been exonerated in the departmental proceedings for identical charges, keeping the case pending against the appellant for investigation, is unwarranted, the FIR deserves to be quashed****."*

[Emphasis supplied]

23. In ***Radheshyam Kejriwal vs. State of West Bengal and Anr.****,*[2] *the question arose that after the exoneration of the appellant in the adjudication proceedings under the provisions of Foreign*

[2](2011) 3 SCC 581

Exchange Regulation Act, whether criminal prosecution on the same set of facts and circumstances can be allowed to be continued. In this factual backdrop, the Hon'ble Supreme Court observed as under:

> ***"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 [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: (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."*
>
> *xxxx xxxx xxxx*
>
> ***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.

xxxx xxxx xxxx

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]

24. In ***Ashoo Surendranath Tewari*** *(supra) also, the Hon'ble Supreme Court relying upon the report of the Central Vigilance Commission ("CVC") whereby the CVC refused to give sanction*

for prosecution of the appellant opining that prima facie charges do not seem to be established against the appellant, observed that chances of conviction in a criminal trial involving the same facts appear to be bleak and accordingly, set aside the judgment of the High Court and that of the Special Judge whereby they had observed that there was no need for sanction under Section 197 CrPC and proceeded against the petitioner. For making such observations the Hon'ble Supreme Court referred to para 38(vii) of ***Radheshyam Kejriwal*** *(supra). The relevant observation of the Court reads thus:*

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

25. At this stage the guidelines laid down by the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335****, relating to the exercise of inherent power under Section 482 CrPC for quashing an FIR or criminal proceedings emanating therefrom could advantageously be referred to, wherein the Court observed as under:*

> *"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.

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> ***(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.***
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
>
> ***(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.***
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under*

> *which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*
>
> *[Emphasis supplied]*
>
> *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."*

20. As the reliability and genuineness of the allegations against the petitioner have already been tested during the disciplinary proceedings and the petitioner has been found to be innocent and accordingly, exonerated from such allegations, therefore, this Court, in view of the above discussion is of the considered opinion that no useful purpose will be served in continuing the present criminal proceeding. Thus, the present case is a fit case which calls for the quashing of the FIR in question.

21. Consequently, the petition is allowed and the FIR No.138/2012 under

Sections 392/411/34 IPC registered at PS Kotwali alongwith all other proceedings emanating therefrom, is quashed *qua* the petitioner.

22. The petition stands disposed of in the above terms.

23. Order be uploaded on the website of this court.

VIKAS MAHAJAN, J

DECEMBER 5, 2024
N.S. ASWAL