

(2009) 11 DEL CK 0413
In the Delhi High Court
Case No : Criminal M.C. 568 of 2009

Devraj Sharma

APPELLANT

Vs

Govt. of Nct of Delhi

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(2), 14
Customs Act, 1962 — Section 135
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2009) 11 DEL CK 0413

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Sunil Bainsla and Arbind Tiwari, for the Appellant; Arvind Kumar Gupta, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Mool Chand Garg, J.—The petitioner is aggrieved of an order passed by the Special Judge issuing summons to the petitioner whose name was shown in Column No. 2 even though it was stated in charge sheet that there is no sufficient evidence against the petitioner. The order passed by the ASJ does not specify as to what is the reason for summoning the petitioner. The order has been passed by the Special Judge as follows:

CC No. 33/2008

Present: Addl. Public Prosecutor for the State.

Heard.

Accused Dev Raj Sharma is mentioned in column No. 2 as it is stated in the charge sheet that there is no sufficient evidence against accused Dev Raj Sharma. Though, there are sufficient evidence against accused Om Prakash. I have carefully perused the charge sheet and gone through the complaint made

before Id. District & Sessions Judge regarding the demand of bribe by accused Dev Raj Sharma and accused Om Prakash. Accordingly, I take cognizance against accused Dev Raj Sharma and accused Om Prakash u/s 7/13 of Prevention of Corruption Act, 1988 and Section 120B and Section 420 of IPC. Let both accused be summoned for 27.5.2008

2. The learned APP has also filed a counter affidavit but in the said counter affidavit, nothing specific has been brought which may support the order passed by the Special Judge. In fact, this case was registered against one Om Prakash on a complaint made by Administrative Civil Judge, Tis Hazari Courts, Delhi to the following effect:

A complaint has been received from Sh. Rakesh Kumar Gupta, Anil Kumar Bhardwaj, Sudhir Kumar, Suresh Kumar, Rakesh Rohilla and Neetu Saini, Ro House No. 2/1237, Gali No. 5, S. garden, Railway line Park, Bahadur Garh, Distt. Jhajjar, Haryana against Sh. Devraj Sharma, S/o Sh. Bhagwan Dutt, R/o New Basti, Mohalla Bhadurgarh, Distt. Jhajjar, Haryana against EC 90017 and Sh. Om Prakash S/o Sh. Om Prakash s/o sh. Bhagat Ram, R/o VPO Mundhela Khurd, Delhi-43, EC-90012. who are working as process server in the office of administrative civil judge, Tis Hazari Court, Delhi as per the complaints the aforesaid officials had approached these persons with a promise to get them employed in the officer of District and Sessions Judge, Delhi against payment of Rs. One Lakh each. The complaint have stated that one Suresh Kumar was also involved in the transaction and believing the version of these persons they had parted with different sums of money to Dev Raj Sharma and Om Prakash process servers.

3. However, in a departmental enquiry the petitioner was exonerated vide order dated 03.05.2008, which reads as under:

15. In view of above evidence, learned Inquiry Officer exonerated Dev Raj and in my considered view rightly so since no evidence came against Dev Raj in the departmental inquiry. Accordingly, Dev Raj is exonerated.

4. In fact, the petitioner was also reinstated in service vide order dated 06.05.2008. The said order reads as under:

OFFICE OF THE ADMINISTRATIVE CIVIL JUDGE:

DELHI

ORDER

WHEREAS Sh. Dev. Raj Sharma, Process Server (Emp Code No. 90017) S/o Sh. Bhagwan Dutt, while posted in the Nazarat Branch, Tis Hazari Courts, Delhi, promised all the complainants to get employ in the office of Id. District & Sessions Judge, Delhi in lieu of payment of Rupees One Lac each to arrange jobs for them in the Rohini courts, after taking money, but could not arrange the same. In view of the above conduct, vide order dated 04.09.2006 Sh. Dev Raj

Sharma, Process Server was placed under-suspension in terms of Sub-rule (2) of 10 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 & a regular Departmental Inquiry under Rule 14 CCS (CCA) Rules, 1965, was conducted against him. Inquiry officer Sh. Tarun Yogesh, Ld. Civil Judge, Tis Hazari Courts, Delhi, submitted his report in which charges against Sh. Dev Raj Sharma, Process Server were not proved.

Accordingly, vide order dated 03.05.2008, the delinquent Sh. Dev Raj Sharma, Process Server S/o Sh. Bhagwan Dutt was exonerated & his suspension is hereby revoked w.e.f 03.05/2008. He will be paid full benefits of the period, he remained suspended & this period will be treated as on duty.

(DIG VINAY SINGH)

ADMINISTRATIVE CIVIL JUDGE

DELHI

No. 19124-19133/F-184/Vig./ACJ/08 Dated, Delhi the 06/05/08 Copy forwarded for information and necessary action to:

1. The Pay & Accounts Officer PAO No. VI, Tis Hazari Courts, Delhi.
2. The AAO, O/o Ld. ACJ, Delhi.
3. The Incharge, Nazarat Branch, Tis Hazari Courts/Patila House Courts, Delhi.
4. Incharge, ACJ Office Tis Hazari Courts, Delhi.
5. Bill Clerk concerned.
6. The Clerk concerned, Service Book/Personal File/Establishment.
7. Official Concerned, Sh. Dev Raj Sharma, Process Server (Emp. Code No. 90017) S/o Sh. Bhagwan Dutt R/o H. No. 118, Gali No. 3, Nai Basti, Near New Era School, Bahadurgarh, Haryana.

(Through Regd. A.D)

(D.P. NIDARIA)

OFFICER/C.O.C

Admn. Civil Judge Office

Delhi

5. In view of the aforesaid, the order passed by the Special Judge is unjustified and is liable to be set aside as held by this Court in the case of Seiko Brushware (India) and Ors. v. Directorate of Revenue Intelligence and Anr. 2009 (3) JCC 2372. The relevant portion of the judgment reads as under:

6. Insofar as the law with regard to quashing of a complaint in such kind of situation, this Court has consistently held that once departmental adjudication

exonerates the accused of the offences which are the basis of lodging a complaint against the accused/petitioners before a criminal Court u/s 135 Customs Act such complaints though could have been filed in view of the judgment delivered in the case of Standard Chartered Bank v. Andhra Bank Financial Survives Ltd. 2006 (6) SCC 1994; the complaint cannot be permitted to be tried further because once the department has no legs to stand with respect to the original cause of action, continuing criminal proceedings and prosecuting the accused in such like matters tantamounts to abuse of the process of Court and therefore such proceedings must come to an end. In this regard reference can be made to a judgment delivered by a learned Single Judge of this Court in the case of Sunil Gulati v. R.K. Vohra and Ors. 2007 1 JCC 220. where it has been held:

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 proceedings are independent in nature.

The findings in the departmental proceedings would not, amount to re-judicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of "prosecution".

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 insofar as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal case before the criminal court by producing necessary evidence.

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 department 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 provision 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 department authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons 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 persons in the departmental proceedings is on merits holding that there is no contravention of the provisions of the any Act.

6. Accordingly, the petition is allowed and the order of summoning passed by the Special Judge against the petitioner is set aside. The bail bond of the petitioner shall stand discharged.

7. The petition is disposed of. Dasti.