REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 575 OF 2020
(ARISING OUT OF SLP (CRL.) NO. 5422 OF 2015)

ASHOO SURENDRANATH TEWARI APPELLANT(S)

VERSUS

THE DEPUTY SUPERINTENDENT OF POLICE, EOW, CBI & ANR. RESPONDENT(S)

JUDGMENT

R.F. Nariman, J.

1. Leave granted.
2. We have heard Mr. Subhash Jha, learned counsel appearing for the appellant and Mr. Vikramjit Banerjee, learned ASG appearing on behalf of the respondent.
3. This case arises out of an FIR that was registered on 09.12.2009 as regards a MSME Receivable Finance Scheme operated by the Small Industries Development Bank of India (SIDBI). It was found that since some vendors were complaining of delay in getting their payments, SIDBI, in consultation with Tata Motors Limited, advised the vendors of Tata Motors Limited to furnish RTGS details for

remittance of funds. It was found that for making payments in RTGS for various purchases made by Tata Motors Limited from one Ranflex India Pvt. Ltd. (hereinafter referred to as “vendor”), 12 payments amounting to Rs.1,64,17,551/- (Rupees one crore sixty four lakhs seventeen thousand five hundred fifty one only) were made through RTGS by SIDBI in the vendor’s account with Federal Bank, Thriupporur. Ultimately, SIDBI was informed by the vendor that it has an account with Central Bank, Bangalore and not with Federal Bank, Thriupporur. On account of this diversion of funds, an FIR was lodged in which a number of accused persons were arrested. We are concerned with the role of the appellant who is Accused no. 9 in the aforesaid FIR.

4. A charge-sheet was then filed on 26.07.2011 in the Court of Special Judge, CBI cases in which it was alleged that the appellant had received an email on 25.05.2009 containing the RTGS details for the account with Federal Bank, Thripporur, which he then forwarded to Accused No.5 (Muthukumar) who is said to be the kingpin involved in this crime and is since absconding. Apparently, based on Muthukumar’s approval, the appellant then signed various cheques which were forwarded to other accounts.

5. By an order dated 27.06.2012 passed by the learned Special Judge, CBI (ACB), Pune, it was found that since no sanction was taken

under the Prevention of Corruption Act, offences under that Act cannot, therefore, be proceeded with against this accused and he was discharged to that extent. So far as sanction under Section 197 of Cr.P.C is concerned, the Special Judge came to the conclusion that there was no need for sanction in the facts of this case. Finding that there was a prima facie case made out against the appellant, the Special Judge refused to discharge the appellant from the offences under the IPC.

6. By the impugned judgment dated 11.07.2014, the High Court agreed with the learned Special Judge that there was no need for sanction under Section 197 Cr.P.C. The High Court then considered an Order of the Central Vigilance Commission (CVC) dated 22.12.2011 which went into the facts of the case in great detail and concurred with the Competent Authority that on merits no sanction ought to be accorded and no offence under the Penal Code was in fact made out. Though this report was heavily relied upon before the High Court, the High Court brushed it aside stating:

> "25. The Central Vigilance Commission could not have come to the aforementioned conclusion unless there was evidence to do so. This submission of the learned counsel is unfounded. The CVC had specifically observed that Shri Karade has benefited from Shri Muthukumar. The CVC ought not to have observed that they are the victims of conspiracy specially when the CVC has observed that Muthukumar had entered into conspiracy with "various other people". The petitioners would fall into the category of various other

people and therefore they ought to be tried for the offence punishable under the Indian Penal Code specially for the offence punishable under Section 420 of IPC."

Since this report is of some importance, we need to set out extracts insofar as the appellant is concerned:

"Sub: RC.13/E/2009 – Mumbai against Shri Ashoo Tiwari, DGM and others, SIDBI.

2. Competent Authority of SIDBI, in his tentative view did not consider it a fit case for sanction of prosecution against the two officials namely S/Shri Ashoo Tiwari, DGM and Shasheel Karade. In his contention the Competent Authority have stated that it is a fact that Shri Muthukumar did not dispatch payment advises to RIPL immediately as a result vendors including RIPL remained unaware about payments. Shri Muthukumar resigned from services of SIDBI on 31.07.2009 before the fraud could be detected and RIPL came to know of fraud/non-receipt of payment in their account when they received the payment advices dispatched as arranged by Shri Ashoo Tiwari and Shri Shasheel Karade. The Competent Authority is of the view had Shri Tiwari and Shri Karade been involved/connived with Shri Muthukumar, they would not themselves have arranged dispatch of advises at the correct and bonafide address of RIPL. Further, on learning about payment to wrong RIPL, Shri Tiwari proactively got the accounts of RIPL with Federal Bank frozen and thus prevented and saved withdrawal of Rs. 34.00 lacks laying in their account. This supports the case of his non-involvement in the fraud.

3. It was brought out during the meeting that the email in question was generated fraudulently by Shri Muthukumar. Shri Ashoo Tiwari, on receipt of the email had endorsed it to Shri Muthukumar for verification as Shri Muthukumar was the designated officer to do so. Shri Tiwari on his part has done the due diligence through in the process he got duped by Sh. Muthukumar.

4. Having gone through the arguments put forth by the CBI and the disciplinary authority in SIDBI during the course of joint meeting, it transpired that the fraud has been perpetrated by Shri Muthukumar who as the officer of SIDBI at that time and entered into conspiracy with various other people including his relatives. Shri Tiwari and Shri Karade seem to have fallen for this machinations by their acts of relying upon the verification report submitted by Shri Muthukumar. They seem to be victims of his fraud.

5. Shri Tiwari seems to have relied on a report of verification of email verification provided by Shri Muthukumar. He has been negligent to that extent that he has not followed the stipulated conditions for the payment but the mitigating factor is that the Bank had directed to go for the RTGS on experimental basis. In the earlier system, the cheques were getting mishandled and misplaced and to expedite payment to vendors on behalf of their customers, RTGS system was being introduced and the entire process of RTGS was under testing, as indicated by the competent authority. Shri Tiwari on his part, seems to have made efforts for carrying out due diligence and in the process seems to have fallen victim to the fraud played by Shri Muthukumar.

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7. It is apparent on the basis of fact that they have merged during the meeting that in this case the entire crime has been committed by Shri Muthukumar, who is still absconding and is yet to be brought to book by CBI. Therefore, in view of the above agreeing with the competent authority, prima facie charges do not seem established against Shri Ashoo Tiwari and Shri Karade and as such sanction for prosecution of Shri Ashoo Tiwari and Shri Shasheel Karade, Manager, SIDBI is not called for and the commission would advise accordingly and RDA would suffice against Shri Ashoo Tiwari, DGM and Shri Shasheel karade, Manager, SIDBI for their procedural and supervisory lapses which have already been examined earlier by the Commission and minor pp had already been advised.”

A reading of this Report shows that, at the highest, the appellant may be negligent without any criminal culpability. In fact, the positive finding of the CVC that the appellant appears to be a victim of Muthukumar's plot is of some importance.

7. 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* vs. *State of Bihar*, (1996) 9 SCC 1, the question before the Court was posed as follows:-

> "**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."

This Court then went on to state:

> "**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."

This being the case, the Court then held:

"**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 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."

In *Radheshyam Kejriwal* vs. *State of West Bengal and Another*,

(2011) 3 SCC 581, this Court held as follows:-

"**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."

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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.

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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."

After referring to various judgments, this Court then culled out the ratio of those decisions in paragraph 38 as follows:-

"**38.** The ratio which can be culled out from these decisions can broadly be stated as follows:

(*i*) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(*ii*) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(*iii*) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(*iv*) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(*v*) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(*vi*) The finding in the adjudication proceedings in favour of

the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(*vii*) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

It finally concluded:

"**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."

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.

8. 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 of the High Court and that of the Special Judge and discharge the

appellant from the offences under the Penal Code.

9. The appeal is disposed of accordingly.

…….... J.
(ROHINTON FALI NARIMAN)

…….... J.
(NAVIN SINHA)

…….... J.
(INDIRA BANERJEE)

New Delhi;
September 08, 2020.