

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1918 of 2011

K. NAGESHWAR RAO

Appellant(s)

VERSUS

DELHI ESTABLISHMENT POLICE

Respondent(s)

O R D E R

1. The appellant is aggrieved by judgment and order dated 30.05.2011 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 607 of 2004.

2. By the impugned judgment and order, the conviction of the appellant for offences punishable under Section 409 of the Indian Penal Code and Section 13(1)(c) read with 13(2) of the Prevention of Corruption Act, 1988 was upheld. However, the High Court reduced the sentence awarded to the appellant from 3 years rigorous imprisonment to 2 years rigorous imprisonment.

3. According to the appellant, a research project was entrusted to him while he was Director of the Central Poultry Training Institute (CPTI) in Bangalore. The research project was at the instance of a private company - M/s Eli Lilly Asia Incorporated, Bangalore. On receiving the proposal for the project, the appellant sought the approval of the Ministry of Agriculture in the Government of India to take up the project.

By order dated 16.12.1998, the Department of Animal Husbandry and Dairying in the Government of India informed the appellant that the Department had no objection to the proposal subject to the following conditions:

(i) There is no financial commitment on the part of CPTI.

(ii) This will not interfere in any way with the normal functioning of the CPTI.

(iii) The contribution of the Department of Animal Husbandry and Dairying / the CPTI should be duly acknowledged whenever the findings of the experiment are published.

4. In view of the 'no objection' received by the appellant, the research project was carried out.

5. The appellant received two bearer cheques amounting to Rs.60,000/- and Rs.20,000/- respectively which were encashed by him in February, 1999. According to the prosecution, these cheques were not deposited in the bank account of the CPTI. Further, the appellant had claimed electricity charges of Rs.7,509/- for March, 1999. This amount was claimed by the appellant even though CPTI had already paid the electricity bill to the Karnataka Electricity Board. The amount of Rs.7,509/- was therefore misappropriated by the appellant and thereby a wrongful loss was caused to the Government of India by misappropriation. The third allegation against the appellant was that he dishonestly sold the resultant chicks for a sum of Rs.40,000/- to M/s Balakrishna Hatcheries (Food

Division), Bangalore in February, 1999. This amount was not credited in the books of account of the CPTI.

6. On the basis of these allegations, a charge-sheet was filed against the appellant on 09.10.2001 before the Special Judge in Bangalore trying the case against the appellant.

7. During the pendency of the trial, the appellant was also served with a chargesheet for a Departmental Inquiry against him. The Articles of Charge reads as follows:

Dr. K. Nageshwara Rao, while functioning as Director, Central Poultry Training Institute (CPTI), Hessarghatta, Bangalore during the year 1999 has committed gross official misconduct in as much as:

ARTICLE - I

Dr. K. Nageshwara Rao during January, 1999 and February 1999 received a sum of Rs.80,000/- from M/s Eli Lilly Inc., Bangalore, towards expenditure for conducting a research trial at CPTI, Bangalore and failed to account for the same in the books of accounts of CPTI, Bangalore.

ARTICLE - II

Dr. K. Nageshwara Rao, after completion of the research during March 1999, claimed Rs.7,509/- from M/s Eli Lilly Inc, Bangalore towards electricity charges in respect of the premises used by M/s Eli Lilly Asia Inc, Bangalore failed to remit the said amount into the account of the CPTI, thus causing financial loss of Rs.7509/- to Government of India.

ARTICLE - III

Dr. K. Nageshwara Rao during February 1999 sold the resultant chicks of research trial pertaining to M/s Eli Lilly Asia Inc., Bangalore for Rs.40,000/-

to M/s Balakrishna Hatcheries (Food Division), Bangalore and received Rs.20,000/- each towards the said sale proceeds during March 1999 and April 1999 respectively and has deliberately no accounted for the same in the books of accounts of CPTI, Bangalore and also failed to deposit the said amount into the accounts of the Institution, and thus, caused a financial loss of Rs.40,000/- to the Government of India.

8. It will be seen that the Articles of Charge against the appellant in the departmental inquiry are almost identical with the charges framed against him in the criminal trial. Be that as it may, the inquiry proceeded against the appellant and by an Inquiry Report dated 04.03.2004, the appellant was held not guilty of the charges made against him in the departmental inquiry. It was held that the research project had nothing to do with the CPTI and was in the appellant's personal capacity and that the appellant was not required to deposit any amount in the bank account of the CPTI. However, with regard to the misappropriation of a sum of Rs.7,509/- claimed by the appellant towards electricity charges, the Inquiry Officer held that this was a supervisory lapse.

9. The report of the Inquiry Officer was considered by the Union Public Service Commission (UPSC) and by order dated 18.01.2005, the report of the Inquiry Officer was accepted. With regard to the misappropriation of Rs.7,509/-, the UPSC was of the view that this constitutes a grave misconduct on the part of the appellant and considered that the ends of justice would be met if penalty of 5% cut in pension for a period of

six months is imposed on the appellant. An order imposing the said punishment on the appellant was passed on 22.02.2005.

10. In the meanwhile, the trial of the appellant was conducted by the Special Judge for CBI cases, Bangalore. It appears that the inquiry report was not placed before the Special Judge since it was pending with the UPSC. The Special Judge by his judgment and order dated 13.04.2004 convicted the appellant and sentenced him to three years rigorous imprisonment.

11. Feeling aggrieved, the appellant preferred an appeal before the High Court which came to be disposed of by the impugned judgment and order dated 30.05.2011 where the conviction was upheld and sentence was reduced to two years rigorous imprisonment. Before the High Court, the appellant failed to produce the report of the inquiry officer and also the order of the UPSC. The High Court was, therefore, unaware of the developments that had taken place against the appellant in the departmental proceedings. It is under these circumstances the conviction of the appellant was upheld by the High Court.

12. There is no one present on behalf of the respondent despite service. A perusal of the counter affidavit indicates that the proceedings before the departmental inquiry are not in dispute. It is also not in dispute that the appellant was

exonerated of two charges levelled against him in the departmental inquiry and in respect of the remaining charge, it was held that he had committed a supervisory lapse for which the appellant was adequately punished.

13. Learned counsel for the appellant has cited before us *Radheshyam Kejriwal v. State of West Bengal & Anr.* [(2011) 3 SCC 581. This Court held in paragraph 38 as follows:

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.

14. It is quite clear from conclusion (vii) above arrived at

by this Court that in the event of an officer being exonerated on merits in a departmental inquiry, the criminal prosecution on the same set of facts and circumstances cannot be allowed to continue. The underlying principle is the higher standard of proof in criminal cases.

15. Applying the conclusion arrived at by this Court, it must be held that since the appellant was exonerated in respect of two substantive charges levelled against him in the departmental inquiry and even in the third one, it is found that it was a supervisory lapse with regard to the amount of Rs.7,509/-, the criminal trial against the appellant ought not to have been continued. Unfortunately, the appellant was not able to produce the report of the inquiry officer before the learned Special Judge. As mentioned, he could not do so since the report of the inquiry officer was under the consideration of the UPSC and the disciplinary authority. The appellant had an opportunity of producing these documents pertaining to the departmental inquiry before the High Court but did not do so because of a communication gap between him and his advocate appearing in the High Court.

16. Be that as it may, the departmental proceedings are not in dispute and the result of the departmental inquiry is very much before us. We are of the opinion that in these circumstances the proceedings against the appellant deserve to be dropped.

Accordingly, we set aside the impugned judgment and order passed by the Special Judge as well as the High Court and acquit the appellant of the charges framed against him.

17. We may mention that learned counsel for the appellant has brought to our notice that the amount of Rs.7,509/- alleged to have been misappropriated by him has been returned by the appellant to the Institute.

18. The appeal is allowed with no order as to costs.

.....J.
[Madan B. Lokur]

.....J.
[Adarsh Kumar Goel]

NEW DELHI
MARCH 19, 2015

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1918/2011

K. NAGESHWAR RAO

Appellant(s)

VERSUS

DELHI ESTABLISHMENT POLICE

Respondent(s)

Date : 19/03/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE ADARSH KUMAR GOELFor Appellant(s) Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Shailesh Madiyal, Adv.
Mr. Sandeep Maktala, Adv.

For Respondent(s) Mr. Arvind Kumar Sharma, Adv. (NP)

UPON hearing the counsel the Court made the following

O R D E R

The appeal is allowed with no order as to costs
in terms of the signed order.(MEENAKSHI KOHLI)
COURT MASTER(JASWINDER KAUR)
COURT MASTER

[Signed Order is placed on the file]