IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 05.06.2025
Pronounced on:04.07.2025

CRMC No.179/2018

WASEEM QURESHI **...PETITIONER(S)**

Through: - Mr. Salih Pirzada, Advocate, with
Ms. Sharaf Wani, Advocate,
Mr. Bhat Shafi, Advocate.

Vs.

STATE OF J&K AND ANOTHER **...RESPONDENT(S)**

Through: - Mr. Mohsin Qadiri, Sr. AAG, with
Ms. Nadiya Abdullah, Assisting Counsel.
Mr. Mohammad Saleem Qureshi (Inspector, I.O. ACB, South Wing)

CORAM: **HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

JUDGMENT

1. The petitioner, through the medium of present petition, has challenged FIR No.28/2010 registered with Police Station Vigilance Organization, Kashmir, alleging commission of offences under Section 5(1)(c) and 5(1)(d) of J&K Prevention of Corruption Act read with Section 120-B, 409, 468 and 471 RPC.

2. As per the impugned FIR, a Joint Surprise Check (JSC) was conducted into the allegations of misappropriation of public revenue by Shri Mohammad Amin Nazki Cashier and other officers/officials of SMHS Hospital, Srinagar, during the period 01.04.2007 to 16.03.2010. During the JSC, it was found that public

revenue was collected by the office of Medical Superintendent, SMHS Hospital, Srinagar, from different sources, namely, investigation charges, parking charges, rent of the canteen of the hospital through Deputy Medical Superintendent/Medical Record Officer and was being handed over to Cashier of SMHS Hospital, Srinagar, for its remittance/deposition under three heads, namely, Hospital Development Fund (HDF), 0210 (Government Revenue) and 8443 (Revolving Fund Deposit). It was found that the revenue collected under the head 'HDF' was supposed to be deposited in J&K Bank Ltd. Branch Office Medical College, Srinagar, and the revenue collected under other two heads was supposed to be deposited in Government Treasury, Tankipora, Srinagar. It was also found during the JSC that account head 0210 was maintained by Accounts Officer as DDO and other two heads i.e. 8443 and HDF, were being operated by Medical Superintendent, SMHS Hospital, Srinagar, as Drawing and Disbursing Officer.

3. It is further alleged in the impugned FIR that JSC conducted revealed that during the period prior to April 2007 to March 2010, an amount of Rs.1,43,89,360/ was realized as revenue under different heads from the public and the same was handed over to Shri Mohammad Amin

Nazki, Cashier, for its remittance to Government Treasury, Tankipora, and J&K Bank. However, Shri Mohammad Amin Nazki, Cashier, unauthorizedly and illegally incurred an expenditure of Rs.63,52,514/ on different components, namely, salary, refunds and refreshment charges out of the aforesaid amount. It was also found that Shri Mohammad Amin Nazki, Cashier, willfully retained an amount of Rs.80,36,846/ and did not deposit the same in the Government Treasury/J&K Bank for a considerable period with criminal intent to misappropriate the same. It was found that Shri Mohammad Amin Nazki, Cashier, had resorted to manipulation of records, namely, Cash Book etc. Thus, it was found that Shri Mohammad Amin Nazki, Cashier, in league with concerned DDOs and other officials of SMHS Hospital, Srinagar, has misappropriated public revenue of Rs.80,36,846/.

4. It is further alleged in the impugned FIR that Shri Mohammad Amin Nazki, Cashier, subsequently, after detection of misappropriation, deposited an amount of Rs.52,89,113/ in Government Treasury leaving behind an amount of Rs.27,47,733/. It is alleged that Shri Mohammad Amin Nazki, Cashier, and others, by abusing their official position and in league with each other,

dishonestly misappropriated public revenue of Rs.80,36,846/. Thus, they have committed offences under Section 5(1)(c) and 5(1)(d) of J&K PC Act read with Section 120-B, 409, 468 and 471 RPC.

5. The petitioner has challenged the impugned FIR and the investigation conducted pursuant thereto on the grounds that he, in his capacity as Head of SMHS Hospital at the relevant time, cannot be made vicariously liable for any illegal action committed by the accused named in the FIR. It has been submitted that the hospital management is dichotomized into Administrative Management and Financial Management. According to the petitioner, the administration is run by Medical Superintendent whereas the financial wing is headed by the Accounts Officer, therefore, misappropriation of finances by the Accounts wing cannot be attributed to the petitioner, who was serving as the Medical Superintendent during the relevant period. It has been contended that there is a huge and inexplicable delay in lodging of the FIR. It has been further contended that the petitioner has been subjected to regular departmental enquiry in respect of similar charges, whereafter he has been exonerated of the charges. Once the petitioner has been exonerated of the charges which are basis of the impugned FIR and the investigation

emanating therefrom, he cannot be prosecuted for the same charges.

6. The petitioner has further submitted that while being posted as Medical Superintendent, SMHS Hospital, Srinagar during the year 2009-2010, he incurred expenditure of Rs.16.45 lacs out of the Hospital Development Fund in the interest of patient care to meet the exigency that arose due to outbreak of general law and order disturbance in the wake of Amarnath land row which was followed by long series of curfews, strikes and road blockades. It has been submitted that in terms of Government Order No.954-HME of 2000 dated 21.12.2000, Medical Superintendent, SMHS Hospital, is competent to utilize Hospital Development Fund subject to certain conditions and in the present case, in accordance with the mandate of aforesaid Government Order, the action regarding utilization of funds to the tune of Rs.16.45 lacs by the petitioner was regularized/ratified by the Committee envisaged under the Government Order dated 21.12.2000(supra). On the basis of these contentions, it has been submitted that the impugned FIR and the proceedings emanating therefrom are liable to be quashed.

7. The respondents have filed a series of status reports indicating therein the status of the investigation. In their status reports, the respondents, besides reiterating the allegations made in the impugned FIR, have submitted that the investigation conducted revealed that from April, 2007 to December, 2009, an amount of Rs.1,02,55,020/ was found to be embezzled by the accused officers/officials in furtherance of a criminal conspiracy. It was also found that Cashier Mohammad Amin Nazki, had remitted an amount of Rs.54,10,285/, thus reducing the embezzled amount to Rs.48,44,735/. According to the respondents, it was found that the Cashier had manipulated the cash books by overwriting and cuttings.

8. It has been contended that that the petitioner, who was Medical Superintendent, SMHS Hospital, Srinagar, was entrusted with the responsibility of having overall control of the accounts section and, thus, entrustment of Government revenue stands established against him as also against the Accounts Officer of SMHS Hospital, Srinagar. On this basis it has been submitted that involvement of the petitioner in commission of the offence is established. It has been further submitted that the Chief Accounts Officer, SMHS Hospital was asked to provide details of vouchers depicting nature of procurement of

items etc. relating to expenditure of Rs.16.45 lacs out of the Hospital Development Fund. It has been submitted that as per the communication of Chief Accounts Officer, SMHS Hospital, Srinagar, amount of Rs.16.45 lacs has not been released by the Government as yet and the same has not been re-couped in the Hospital Development Fund as yet.

9. It has been further indicated in the latest status report that attested copies of list of vouchers, number, date and amount have been provided but the original vouchers are not available in the office of Medical Superintendent as the same have got damaged in the floods of 2014. The latest status report filed by the respondents gives the details about the vouchers pertaining to expenditure of amount out of Hospital Development Fund, which, according to the details, aggregates to an amount of Rs.16,83,913. According to the Investigating Agency, scrutiny of the record and the list of vouchers reveals that the amount has been spent for payment of commercial tax, HSD/repair charges/loading un-loading charges, telephone bills, refreshment charges, purchase of electric lamps, polythene, torches, steel trunks, stationary items, biding charges, carpenter items, sign boards, soap, repairing of computer, grass cutting

machine, welding charges, room heater, crockery, repair of type writer, plumber items, cartridges etc.

10. It has been submitted that the petitioner along with other officials, who were working in SMHS Hospital, Srinagar, at the relevant time, had hatched a conspiracy between themselves and effected misappropriation of an amount of Rs.48,44,735/ thereby causing loss to the state exchequer by abusing their official positions. Thus, according to the respondents, offences under Section 5(1)(c), (d) of J&K Prevention of Corruption Act read with Section 120-B, 409, 468 and 471 of RPC are made out against the petitioner and the co-accused.

11. I have heard learned counsel for the parties and perused record of the case including the Case Diary.

12. The star ground that has been urged by learned counsel for the petitioner for impugning the criminal proceedings against the petitioner is that the petitioner has been exonerated of the charges which are basis of the criminal prosecution against him in a regular departmental enquiry and the enquiry report has been accepted by the Government, therefore, he cannot be subjected to criminal prosecution for the same charges. In order to support his argument, the learned counsel has

placed strong reliance upon the judgment of the Supreme Court in the case titled **Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI & anr.** 2020 SCC OnLine SC 739.

13. It has been contended that criminal proceedings against the petitioner cannot go on because the standard of proof in criminal proceedings is higher than the standard of proof in a departmental enquiry. Thus, if the charges could not be proved on the touchstone of preponderance of probability, there is no chance of proof of said charges in a proceeding where the same are required to be proved beyond reasonable doubt.

14. In the present case, the record available in the Case Diary as well as the documents annexed to the petition tend to show that vide Government Order No.273-HME of 2014 dated 28.05.2014, Dr. Parvez Ahamd Shah was appointed as Enquiry Officer to enquire into the charges framed against the petitioner. Accordingly, a regular departmental enquiry in terms of Rule 33 of the J&K Civil Services (Classification, Control and Appeal) Rules, 1956 came to be initiated against the petitioner. As many as six charges were framed against the petitioner. As per Article of Charge-1, it was alleged that the petitioner, in his capacity as Medical Superintendent of SMHS Hospital,

was involved in financial mismanagement and embezzlement of Government money under Hospital Development Fund in SMHS Hospital, Srinagar. As per Article of Charge-2, it was alleged that the petitioner had not bothered to exercise a proper check and control over the Cashier. Vide Article of Charge-3, it was alleged that the petitioner had spent an amount of Rs.16.45 lacs out of Hospital Development Fund on purchase of medicines etc. in view of road blockades during Amarnath land row of 2008 without seeking prior approval of the competent authority, which act of the petitioner tantamounts to abuse of official position. As per Article of Charge-4, the petitioner had failed to perform his duties efficiently, inasmuch as he had violated the guidelines with regard to Hospital Development Fund as contained in Government Orde dated 21.12.2000(supra). As per Article of Charge-5, the petitioner had failed to keep a close watch on the working of accounts/cash section which resulted in misappropriation/embezzlement of Government funds. As per Article of Charge-6, the petitioner had managed absolute dishonesty in discharge of his official duties with a view to misappropriate/embezzle the government funds.

15. The Enquiry Officer vide his report dated 11.07.2014, exonerated the petitioner from all the six charges. The

Government feeling dissatisfied with the report of enquiry, issued Government Order No.295-HME of 2015 dated 04.08.2015, thereby constituting another Enquiry Committee comprising Dr. Samir Mattoo, Director Health Services, Kashmir, Dr. Yashpal Sharma, Mission Director, National Health Mission, and Shri Zahoor Ahmad Wani, Director Finance, Health and Medical Education Department. The Enquiry Committee was directed to submit its findings/recommendation within a period of one month. The said Enquiry Committee submitted its report vide communication dated 27.04.2016, making the following observations:

> "The perusal of all the enquiry reports and due consideration of the averments made by Dr. Qureshi, the committee observes that Dr. Qureshi has not been found responsible for the embezzlement. The procurement of medicine/POL from HDF in violation of rules thereto during the Amarnath agitation of 2008 has been confirmed/ratified by the Hospital Development Committee (HDC). The rest of the outstanding embezzled amount against the delinquent cashier, Mr. Mohammad Ami Nazki, needs to be recovered forthwith after complete reconciliation, of all the receipt pertaining to the period, by the Accounts officers, Associated Hospital Srinagar Supervisory laps on HDF account and the HDF cashier needs to be looked into as Qureshi during the course of hearing stated that maintaining the HDF accounts w the responsibility of the DDO (Accounts Officer). However, the committee observes the Dr. Qureshi's statement though plausible yet not tenable."

16. The aforesaid report of the Enquiry Committee has been accepted by the Government in terms of Government Order No.508-HME of 2016 dated 16.09.2016 whereby charges levelled against the petitioner have been decided to be dropped. However, he has been warned to remain careful in future during the conduct of any assignment. It has also been observed that in future the petitioner should not be posted to any such assignment which requires accounting supervision.

17. From the foregoing analysis of the facts relating to the present case, it is clear that none of the charges leveled against the petitioner including those related to embezzlement of funds have been established during the departmental enquiry conducted against him. It, however, seems that the Government is not satisfied with the manner in which the petitioner has exercised his power of supervision over the accounts wing of the SMHS Hospital, Srinagar, at the relevant time. The question that begs for answer is as to whether in the facts and circumstances of the case, the petitioner, in view of the ratio laid down by the Supreme Court in **Ashoo Surendranath Tewari's** case (supra) deserves to be let off from the criminal prosecution on the ground that for identical charges he has been exonerated in regular departmental enquiry by as many as

two Enquiry Committees and report of the second enquiry committee stands accepted by the Government.

18. This Court had an occasion to survey the legal position on the issue as to in what circumstances exoneration in departmental proceedings would lead to quashment of criminal proceedings on identical charges in the case of **Sarwan Singh vs. State,** 2020 SCC OnLine J&K 736. It would be apt to refer to the relevant paragraphs of the said judgement which are reproduced as under:

> ***7.*** *In P.S. Rajya vs. State of Bihar, (1996) 9 SCC 1, the Supreme Court has observed 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. In the said case, which pertained to the charges of disproportionate assets, the Engineers had prepared valuation report of the house of the petitioner for income tax purposes depicting its valuation @Rs. 4.67 lakhs, whereas, same Engineers prepared valuation of the same house during the investigation of the case by the CBI @ Rs. 7, 69, 300/-. The appellant in that case was cleared of the charges in the departmental enquiry by the Central Vigilance Commission, which was accepted by the UPSC. The Court, on the peculiar facts of the case, held that criminal proceedings initiated against the appellant on the same charges cannot be pursued.*
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> ***8.*** *In a later judgment of the Supreme Court in Kishan Singh (D) through LRs v. Gurpal Singh, (2010) 8 SCC 775, a contrary view has been taken by the Supreme Court to the effect that the findings of fact recorded by Civil Court do not have any bearing so far as criminal case is concerned and vice-versa. The Court observed that there is neither statutory nor any legal principal that findings recorded by the Court either in Civil or Criminal proceedings shall be binding between the parties while dealing with same subject matter and both the cases have to be decided on the basis of the evidence adduced therein.*

9. *The two contrary views taken by the Supreme Court in the aforesaid two cases came up for consideration before a three Judge Bench of the Supreme Court in the case of State (NCT of Delhi) v. Ajay Kumar Tyagi, (2012) 9 SCC 685. The Court, after noticing the facts and observations of the Supreme Court in P.S. Rajya's case, concluded as under:—*

"Even at the cost of repetition, we hasten to add none of the heads in the case of P.S. Rajya (Supra) is in relation to the effect of exoneration in the departmental proceedings on criminal prosecution on identical charge. The decision in the case of P.S. Rajya (Supra), therefore does not lay down any proposition that on exoneration of an employee in the departmental proceeding, the criminal prosecution on the identical charge or the evidence has to be quashed. It is well settled that the decision is an authority for what it actually decides and not what flows from it. Mere fact that in P.S. Rajya (Supra), this Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground. This would be evident from paragraph 23 of the judgment, which reads as follows:

> *"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."*

From the reading of the aforesaid passage of the judgment it is evident that the prosecution was not terminated on the ground of exoneration in the departmental proceeding but, on its peculiar facts".

10. *The Court further referred to the observations of the Supreme Court in State v. M. Krishna Mohan, (2007) 14 SCC 667 that exoneration in departmental*

proceeding ipso facto would not lead to acquittal of the accused in criminal trial and that decision in P.S. Rajya's case was rendered on peculiar facts obtaining therein.

11. *The Supreme Court also referred to the case of Central Bureau of Investigation v. V.K. Bhutiani, (2009) 10 SCC 674, wherein the Court had noted with approval its observations in M. Krishna Mohan's case (supra) that exoneration in departmental proceedings would not lead to automatic exoneration in criminal proceedings. It was a case where the accused had challenged his prosecution before the High Court relying on the decision of the Supreme Court in P.S. Rajya's case and the High Court quashed the prosecution. On a challenge by the CBI, the decision was reversed and after relying on the decision in the case of M. Krishna Mohan, the Supreme Court came to the conclusion that quashing of the prosecution is illegal.*

12. *The Supreme Court in Ajay Kumar Tyagi's case (supra) after discussing the whole law on the subject, came to the conclusion that exoneration in departmental proceedings ipso facto would not lead to acquittal of the accused in criminal trial. While holding so, the Court observed as under:—*

> *"Therefore, in our opinion, the High court quashed the prosecution on total misreading of the judgment in the case of P.S. Rajya (Supra). In fact, there are precedents, to which we have referred to above speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case cannot be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.*
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> *We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result into the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely*

based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further they are not in the same hierarchy".

13. *Learned counsel for the petitioner has vehemently contended that the judgment of the Supreme Court in Ashoo Surendranath Tiwari 's case being later in point of time would hold the field. In the said case, the Supreme Court has, after relying upon the ratio laid down in P.S. Rajya's case as also the ratio laid down by the Supreme Court in Radheshyam Kejriwal v. State of West Bengal, (2011) 3 SCC 581, culled out the following principles:—*

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

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

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

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

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

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

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

14. *The Court went on to opine that the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceedings for a 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.*

15. *From careful analysis of the law discussed by the Supreme Court in the aforesaid judgments, it is clear that there is diversion of opinion expressed by the Supreme Court in Ajay Kumar Tyagi's case and Ashoo Surendranath Tiwari's case. While in the former judgment, the Supreme Court has, after discussing the earlier case law on the subject, observed that the exoneration in departmental proceedings would not result in quashing of the criminal prosecution, whereas in the Ashoo Surendranath Tiwari 's case, it has been laid down that if the allegations in the adjudication proceedings as well as in the proceedings for prosecution are identical and the exoneration of the person concerned in the adjudication proceedings is on merits, the trial of the person concerned shall be an abuse of the process of the Court. It is to be noted here that in Ashoo Surendranath Tiwari's case (supra), the judgment delivered by the Supreme Court in State v. Ajay Kumar Tyagi (supra) has neither been referred nor considered by the Court. Both the aforesaid judgments have been delivered by Benches of co-equal strength.*

16. *The question arises as to what is the course open to this Court in this situation. A five Judge Bench of the Supreme Court has, in the case of Atma Ram v. State of Punjab, AIR 1959 SC 519, observed that when confronted with two contrary decisions of equal authorities, the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task of preferring one view to another. A Full Bench of the Bombay High Court in the case of Kamleshwarkumar Ishwardas Patel v. Union of India, (1994) 2 Mah LJ 1669, while considering the issue regarding the course to be followed by the High Court when confronted with contrary decisions of the Supreme Court, observed as under:*

14. It has been pointed out by one of us, while speaking for a Special Bench of the Calcutta High Court in Bholanath v. Madanmohan, AIR 1988 Cal 57 on the question as to the course to be followed by the High Court when confronted with contrary decisions of the Supreme Court emanating from Benches of co-equal strength, as hereunder:

"..... When contrary decisions of the Supreme Court emanate from Benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different sets of circumstances. This in fact is a course which was recommended by our ancient Jurists - "Srutirdwaidhe Smritirdwaidhe Sthalaveda Prakalapate" - in case there are two contrary precepts of the Sruties or the Smritis, different cases are to be assumed for their application. As Jurist Jaimini said, contradictions or inconsistencies are not to be readily assumed as they very often be not real but only apparent resulting from the application of the very same principle to different sets of facts - "Prayoge Hi Virodha Syat". But when such contrary decisions of co-ordinate Benches cannot be reconciled or explained in the manner as aforesaid, the question would arise as to which one the High Court is obliged to follow."

"One view is that in such a case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow but it must follow the later one. According to this view, as in the case of two contrary orders issued by the same authority, the later would supersede the former and would bind the subordinate and as in the case of two contrary legislations by the same Legislature, the later would be the governing one, so also in the case of two contrary decisions of the Supreme Court rendered by Benches of equal strength, the later would rule and shall be deemed to have overruled the former. P. B. Mukharji, J. (as his Lordship then was) in his separate, though concurring, judgment in the Special Bench decision of this Court in Pramatha Nath v. Chief Justice, AIR 1961 Cal 545 at p.55, para 26, took a similar view, S P. Mitra, J. (as his Lordship then was) also took such a view in the Division Bench decision of this Court in Sovachand Mulchand v. Collector, Central Excise, AIR 1968 Cal 174 at 186, para 56. To the

same effect is the decision of a Division Bench of the Mysore High Court in New Krishna Bhavan v. Commercial-tax Officer, AIR 1961 Mys 3 at p. 7 and the decision of the Division Bench of the Bombay High Court in Vasant v. Dikkaya, AIR 1980 Bom 341. A Full Bench of the Allahabad High Court in U.P. State Road Transport Corpn. v. Trade Transport Tribunal AIR 1977 All 1 has also ruled to that effect. The view appears to be that in case of conflicting decisions by Benches of matching authority, the law is the latest pronouncement made by the latest Bench and the old law shall change yielding place to new."

"The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view, is better in point of law. Sandhawalia, C.J. in the Full Bench decision of the Punjab & Haryana High Court in Indo-Swiss Time Ltd. v. Umarao, AIR 1981 P&H 213 took this view with the concurrence of the other two learned Judges, though as to the actual decision, the other learned Judges differed from the learned Chief Justice. In the Karnataka Full Bench decision in Govinda Naik v. West Patent Press Co., AIR 1980 Kar 92 the minority consisting of two of the learned Judges speaking through Jagannatha Shetty, J. also took the same view (supra, at p. 95) and in fact the same has been referred to with approval by Sandhawalia, C.J. in the Full Bench decision in Indo-Swiss Time (supra)."

"This later view appears to us to be in perfect consonance with what our ancient Jurist Narada declared-Dharmashastra Virodhe Tu Yuktiyukta Vidhe Smrita - that is, when the Dharmashastras or Law Codes of equal authority conflict with one another, the one appearing to be reasonable, or more reasonable is to be preferred and followed. A modern Jurist, Seervai, has also advocated a similar view in his Constitutional Law of India, which has also been quoted with approval by Sandhwalia, C.J. in Indo-Swiss Time (supra, at p. 220) and the learned Jurist has observed that "judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and Subordinate Courts" and that "in such circumstances the correct thing is to follow that judgment which appears to the Court to state

the law accurately or more accurately than the other conflicting judgment."

"It appears that the Full Bench decision of the Madras High Court in R. Rama Subbnarayalu v. Rengammal AIR 1962 Mad 480 would also support this view where it has been observed (at p. 452) that "where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one". According to the Nagpur High Court also, as would appear from its Full Bench decision in D.D. Bilimoria v. Central Bank of India, AIR 1943 Nag 340 at p. 343, in such case of conflicting authorities, "the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other", thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore, would be at liberty to follow the one or the other."

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".... We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated hereinbefore, and as has also been indicated by the Supreme Court in Atma Ram (supra), the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter, of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction."

17. *From the aforesaid enunciation of the law relating to the application of two apparently contrary decisions of the Supreme Court, it is clear that the High Court has to firstly consider the facts and circumstances involved in the decisions rendered by the Supreme Court and then decide as to which of the two decisions is applicable to the facts of the case which is subject matter of*

adjudication before the High Court. In the backdrop of this legal position, let us now consider as to which of the aforenoted two Judgments of the Supreme Court would apply to the facts of the instant case."

19. In the face of aforesaid legal position on the subject, it is evident that for determination of the question as to whether criminal proceedings against an accused deserve to be quashed once it is shown that he has been exonerated in departmental proceedings on identical charges, ultimately boils down to the facts and circumstances of each case. If from the facts and circumstances involved in a particular case, it is shown that the findings of the enquiry report made in the disciplinary proceedings have been accepted by the Disciplinary Authority and the accused has been exonerated of the same very charges which form basis of his criminal prosecution, then it may be a case for quashing the criminal proceedings against him but in a case where the Disciplinary Authority has not finally accepted the exoneration of the accused in departmental proceedings, the criminal proceedings cannot be quashed merely because the enquiry report made in the disciplinary proceedings is in his favour. Similarly, where a clean chit has not been given to the accused in the disciplinary proceedings or where he has been let off in the disciplinary proceedings on technical grounds, the same may not form

a good enough reason for quashing the proceedings against him. It is not that in every case where an accused has been exonerated of charges in departmental proceedings, it could lead to his automatic let off from the criminal proceedings on identical charges. No straight jacket formula can be laid down for taking a particular view of the matter. It all depends upon the facts and circumstances of each case.

20. With the aforesaid legal position in mind, let us now advert to the facts of the present case. The allegation of the prosecution is that there has been embezzlement of Rs.1,02,55,020/ during the period from April 2007 to December, 2009, out of which co-accused Mohammad Amin Nazki, Cashier, has remitted an amount of Rs.54,10,285/ thereby reducing the embezzled amount to Rs.48,44,735/. Out of the alleged embezzled amount, the allegation against the petitioner is that he has utilized an amount of Rs.16.45 lacs against the norms without previous approval from the competent authority and so far as the other portion of the embezzled amount is concerned, he, being the administrative head of the hospital, was supposed to have control and supervision over the accounts wing and, therefore, he is responsible for embezzlement of the amount.

21. In so far as embezzlement of the amount on account of non-remittance of cash receipts in the Treasury under account heads 0210 and 8443 is concerned, the DDO in respect of these two account heads is the Accounts Officer and not the Medical Superintendent. This is clear from the report of the Enquiry Committee constituted pursuant to the report of the audit party of the AGs office, which is available in the Case Diary. In the said report, it is clearly indicated that the Accounts Officers of the relevant time, namely, Mohammad Shafi, G. M. Bhat, S. M. Kakroo, M. Y. Hamdani, A. S. Mir, M. Y. Hamdani and M. A. Baba were the drawing and disbursing officers during the period January, 2007 to December, 2009. It is also indicated in the said report that the petitioner, in his capacity as Medical Superintendent, was custodian of Hospital Development Fund and he had overall control and supervision over the accounts section.

22. Thus, the petitioner in view of the material available on record of the Case Diary, though had a supervisory control over the accounts section, yet he was not the drawing and disbursing authority nor the immediate controlling officer of the accounts wing of SMHS Hospital. Obviously, he was neither responsible for maintaining the cash book nor was he responsible for remittance of cash

into the Treasury or to sign the cash book, which is the responsibility of drawing and disbursing officer and in this case, the Accounts Officer. To the extent of embezzlement in relation to account heads 0210 and 8443, the conduct of the petitioner, at worst, can be a case of lack of supervision but on that basis, it cannot be stated that he had conspired with the cashier or any other officials of the accounts wing for commission of misappropriation of funds.

23. So far as liability of the petitioner to account for the amount of Rs.16.45 lacs, which he has incurred as expenditure on several items out of the Hospital Development Fund, is concerned, his explanation is that he had incurred this expenditure to meet the extreme exigencies which had arisen due to the situation arising on account of Amarnath land row in the year 2008, which resulted in large scale disruption in traffic, law and order problem in whole of the erstwhile State of Jammu and Kashmir.

24. We have on record of the Case Diary, copy of Government Order No. 945-HME of 2000 dated 21.12.2000, which provides for creation of Hospital Development Fund out of the amount collected from OPD ticket charges. As per the said Government Order, the

fund has to be maintained/utilized by the Medical Superintendent for minor repairs/maintenance of hospital concerned and while spending money out of this fund, minimum of two MLAs/MLCs in the case of SMHS Hospital have to be associated by the concerned Medical Superintendent.

25. In the Case Diary, there is also a copy of office memorandum, the contents whereof are reproduced as under:

> "In order to run the Health care services effectively during the year 2007-08, 2008-09, there were untoward circumstances like Road blockade due to AMARNATH LAND ROW followed by series of strickes and curfews for months together, the Hospital has to get the employee during the period of agitation and drop them nearly for 4 months as was advised by Divisional Authorities and then Hon'ble Health Minister and then. His Excellency the Governor to provide free 24 hour. Ambulatory services to each and every patient and vehicles to every Doctor and Paramedical / Nurses so that Hospital services shall run efficiently and smoothly.
>
> It is on record that due to Road Blockage of AMARNATH LAND ROW, the Valley fell short of Medicines and Medicines were purchased to keep the store inventory up dated. Further it was followed by State Legislative Assembly Election and then parliamentary elections when Valley observed frequent strikes /bands curfews and Hospital was run in spite of all these difficulties without any extra budgetary support from the Government, when this office has demand an additional budget in all the units of appropriation to meet out the liabilities but the additionality was never given which compelled this office to incur expenditure of Rs. 16,45,000/-.

> Now, in order to satisfy the financial discipline it was decided that an amount of Rs. 16,45000/- will be recouped out of approved funds for the year 2010-2011 without seeking any additionality or creating any further liability."

26. The aforesaid office memorandum is, *inter-alia*, signed by two members of Legislative Assembly, namely, Shri Mubarak Gul and Dr. Sheikh Mustafa Kamal. It is clear from the said memorandum that the amount of Rs.16.45 lacs was decided to be recouped out of approved funds for the year 2010-2011. In the Case Diary, we have another document which is signed, *inter-alia*, by the aforenamed two MLAs and as per the said document, the action taken by the Hospital Development Committee in 2008-2009 during Amar Nath land row while spending Rs.16.45 lacs for purchase of essential drugs/P.O.L etc. has been regularized/ratified. There are also communications on record from Principal, Government Medical College, Srinagar, addressed to the Secretary to the Government, Health and Medical Education Department, seeking regularization of expenditure of Rs.16.45 lacs in respect of Hospital Development Fund.

27. From the aforesaid documents, it is clear that the action of the petitioner of spending amount of Rs.16.45 lacs out of the Hospital Development Fund on patient care, repairs, expenditure on account fuel etc. for ambulances

has been ratified by Hospital Development Committee. As per the investigation conducted by the respondent Investigating Agency, even the vouchers in respect of an amount of Rs.16,83,913/ have been collected during the investigation of the case, though the original vouchers are stated to have been damaged/destroyed in the floods of 2014. Therefore, it is a case where after investigation of the case it has been found that the petitioner has incurred expenditure of Rs.16.45 lacs out of the Hospital Development Fund in the interests of patient care and in extraordinary circumstances which had arisen on account of Amar Nath land row and his action in this regard has been ratified by the Hospital Development Committee.

28. As per Government Order No.954-HME of 2000 dated 212.12.2000, Hospital Development Fund is meant for effecting minor repairs/maintenance of hospital concerned and the money out of this fund can be spent with the approval of the Hospital Development Committee. There may be procedural infractions on the part of the petitioner while taking action of incurring expenditure out of the Hospital Development Fund but that, by itself, cannot be a ground to subject him to criminal prosecution.

29. The question, whether violation of rules and departmental norms would amount to an offence under

the Prevention of Corruption Act, was considered by the Supreme Court in the case of **C. K. Jaffer Sharief vs. State,** (2013) 1 SCC 205. The Supreme Court in the said case held as under:

> *"If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant."*

30. In the present case, the prosecution records reveal that the petitioner may have violated departmental norms while incurring expenditure out of the Hospital Development Fund but, nonetheless, the only intention of the petitioner in doing so was to take care of extreme urgency that had arisen on account of peculiar circumstances which had prevailed pursuant to Amarnath Land row and the said action of the petitioner was even ratified by the Hospital Development Committee. Similarly, the petitioner may have also been found lacking in exercising a proper control over the accounts wing of the hospital but because he was not the Drawing and Disbursing Officer of those two particular accounts, therefore, it cannot be inferred that he was a part of the

conspiracy in so far as embezzlement of funds out of those two account heads is concerned. Mere lack of supervision on the part of the petitioner cannot form a basis for roping him in the conspiracy, particularly when he is not a signatory to the account books pertaining to those two account heads.

31. It is in the face of aforesaid facts and circumstances that the both the Enquiry Committees have exonerated the petitioner of the charges levelled against him and the Government has only issued a warning against him on account of his lack of supervision over the accounts wing. In such circumstances, the ratio laid down by the Supreme Court in **Ashoo Surendranath Tewari's** case (supra) would apply on all fours to the present case. Therefore, the petitioner, on the basis of the material collected by the Investigating agency during the investigation of the case and on account of the fact that he has been fully exonerated by the two enquiry committees in the regular departmental proceedings, cannot be made to suffer the criminal prosecution emanating out of the impugned FIR. In these circumstances, this Court finds the present case as the fit one for exercising its powers under Section 482 of Cr. P. C for quashing the criminal

proceedings against the petitioner so as to secure the ends of justice and to prevent abuse of process of law.

32. Accordingly, the petition is allowed and the impugned FIR and the proceedings emanating therefrom to the extent of petitioner only, are quashed.

33. The Case Diary be returned to learned counsel for respondents.

(Sanjay Dhar)
Judge

Srinagar,
04.07.2025
"Bhat Altaf"

Whether the **judgment** is reportable: **YES/NO**