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

+ CRL.M.C. 1626/2023 & CRL.M.A. 6153/2023

CAPTAIN ARVIND KATHPALIA

..... Petitioner

Through: Mr. Maninder Singh, Sr. Advocate
with Mr. Dinhar Takiar, Ms. Simran
Chaudhary and Mr. Harsh Vashisht
and Ms. Isha Khanna, Advocates.

Versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State with Insp. Virendra Pakhare,
PS: IGI Airport.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% **31.08.2023**

1. The petitioner vide the present petition under Section 482 of the Code of Criminal Procedure, 1973 seeks quashing of FIR No.475/2018 dated 24.08.2018 registered under Section(s) 201/204/465/466/471/506/202/217/279/280/120B of the Indian Penal Code, 1860 [**IPC**] and Section 11 of the Aircraft Act, 1934 [**Aircraft Act**] at P.S. I.G.I. Airport, and chargesheet in Criminal Case No.6564/2020 under Section(s) 465/466/468/471 IPC and Section 11 of the Aircraft Act pending before learned ACMM, Patiala House Courts, Delhi.

2. As per FIR, the petitioner, a pilot with Air India, was to operate a flight from Delhi to Bangalore on 19.01.2017, before which he missed the mandatory pre-flight breath analyzer test. Upon reaching Bangalore, the

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petitioner was telephonically informed that he can take the breath analyser test, which he missed in Delhi, in Bangalore as well. The petitioner, without undergoing the Breath Analyser test in Bangalore as well, again operated a flight from Bangalore to Delhi.

3. Upon reaching Delhi, the petitioner, instead of reporting for the post-flight breath analyser test, went to the Pre-flight Medical Examination Room [**PFMER**] and made a false entry in the Pre-flight Medical Examination Register for the flight he operated from New Delhi to Bangalore. The complainant made a complaint to the Director General of Civil Aviation [**DGCA**], who vide order dated 15.02.2017, suspended the petitioner's Air Transport Pilot License [**ATPL**] for a period of three months with effect from 07.02.2017.

4. Further, during the investigation by the DGCA, Dr. Nitin Seth, the On-Duty Doctor in the PFMER, stated that the petitioner herein manipulated the record in the register after operating the flight to New Delhi. The petitioner, upon coming to know that Dr. Seth had deposed against him, made threats and intimidated him to withdraw his statement. Complaint of the threats received was made to the DGCA, however, no action was taken.

5. Aggrieved by the order dated 15.02.2017, wherein the DGCA did not take cognizance of the threat complaint, the Indian Commercial Pilot Association [**ICPA**], being the complainant therein, preferred a writ petition before the High Court of Delhi vide WP (Civil) No. 3231/2017 titled **Indian Commercial Pilots Association vs. Director General of Civil Aviation**, seeking issuance of a writ of *mandamus* directing the DGCA and Air India to take action against the petitioner herein.



6. Learned senior counsel for the petitioner submits that the Disciplinary Authority of Air India filed a chargesheet dated 13.02.2019 against the petitioner, alleging acts of forgery and misconduct and the petitioner filed a reply dated 01.05.2019 thereto. Drawing attention of this Court to the same and other relevant documents on record alongwith the reply dated 01.05.2019 thereto of the petitioner, whereafter the Chairman of Air India vide order dated 10.02.2020 found the allegations of forgery as unsubstantiated against the petitioner and therefore closed the disciplinary case initiated against him, the learned senior counsel submits that the present FIR cannot continue against the petitioner. In support thereof, reliance is placed on *Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police, EOW, CBI & Anr.* (2020) 9 SCC 636, *Johnson Jacob vs. State* 2022 SCC OnLine Del 1864 and *Keshav vs. State of Maharashtra* 2022 SCC OnLine Bom 1314.

7. Learned senior counsel appearing for the petitioner further submits that even otherwise the charge of forgery is not on well-founded grounds as *firstly* the petitioner entered his Name, Staff No., Time of Reporting, etc. among other details, leaving only the fields of *BA Reading, Time* and *Signature of Medical Officer* blank as they were pertaining to BA Test, which he had not undergone and *secondly* entering his personal details cannot be said to be a false document. Thus, according to him, no offence of forgery is made out against the petitioner. In support thereof, reliance is placed on *Mohammed Ibrahim & Ors. vs. State of Bihar & Anr.* (2009) 8 SCC 751.

8. The learned APP appearing for the State opposing the petition submits that disregarding the due procedure of law with intent to benefit, a forged



entry was made. He further submits that the petitioner had ample opportunity to undergo BA Test on return from Bangalore, but flouting the express regulations, he did not follow the procedure.

9. Present is a case where, *admittedly*, under similar facts involving the similar circumstances the petitioner has already been exonerated by the Chairman of Air India vide order dated 10.02.2020, categorically recording “*I, therefore, conclude that Capt. Kathpalia has been adequately punished for the above lapses twice by DGCA and punishment reverting from his post Director (Operations) to the post of Executive Director has also been imposed on him. This itself is a substantial major penalty.*”, after finding the allegations of forgery unsubstantiated against him, the disciplinary case initiated against him was closed. In the opinion of this Court, once Air India itself has closed the disciplinary proceedings against the petitioner after going through the relevant records before it and upon finding no merits therein has duly recorded the above prior to closing it, in the opinion of this Court, not much remaining for the FIR to proceed against the petitioner involving similar offences.

10. Needless to say, the above is *de hors* the fact that there is no bar as to the disciplinary proceedings and the criminal prosecution continuing together at the same time and that the outcome of the disciplinary proceedings will neither have any bearing upon the pendency nor upon the outcome of the criminal prosecution as they can co-exist. However, where the case is one wherein exoneration is on merits as the allegation thereof has been conclusively found unsustainable, based whereon innocence has been proven, then in such a situation, in the opinion of this Court, there is no reason and/ or fruitful purpose for the criminal prosecution on the same set



of facts to continue. Reliance in this regard may be placed on *Ashoo Surendranath Tewari (supra)*, wherein the Supreme Court, after referring to various judgments, culling out the ratio therein, has held as under:

“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.*

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.”

11. *Ashoo Surendranath Tewari (supra)* has also been followed by a coordinate Bench of this Court in *Johnson Jacob vs. State* 2022 SCC OnLine Del 1864.



12. In view of the aforesaid, the continuance of the FIR under the aforesaid circumstances shall, in the opinion of this Court, result in the petitioner undergoing the ordeal twice over again for the same offence. The petitioner cannot be subjected to *double jeopardy* for the same offence, once after having been given a clean chit on merits in the disciplinary proceedings.

13. On examination of the factual matrix, this Court finds that offence of forgery, as alleged by the respondent, is not made out against the petitioner *primarily* as the prime factor to be taken into consideration is the element of creation of a false document with intent to cause damage or injury and in the present case it is the petitioner who had filled in all his personal particulars leaving hardly any scope for causing any damage or injury. Had they been missing or interpolated or otherwise, the situation would have been different and the offence of forgery would have been made out. Admittedly, the situation is not such here. Reliance in this regard may be placed on *State of Haryana vs. Bhajan Lal* 1991 SCC (Cri), wherein the Hon'ble Supreme Court has held 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.”

14. Given the totality of the facts and circumstances, this Court is of the opinion that allegations against the petitioner, are wholly insufficient to make out a case against him, much less for keeping the FIR alive. Moreover, in view of the prevailing facts involved and the legal position discussed hereinabove, in the opinion of this Court, subsistence of the present criminal proceedings emanating from the FIR in question against the petitioner, is likely to result in subjecting him to unwarranted injustice.



15. Although it is trite that the power of quashing an FIR under Section 482 Cr.P.C. is to be used sparingly but in situations like the present where there is hardly any ground leading to the conviction of the petitioner as the same is based on facts which are no more alive, the Court is well within its right to proceed with quashing of the FIR. As such, in view of the peculiar facts and circumstances involved herein, the present FIR is liable to be quashed.

16. Accordingly, FIR No.475/2018 dated 24.08.2018 registered under Section(s) 201/204/465/466/471/506/202/217/279/280/120B IPC and Section 11 Aircraft Act at P.S. I.G.I. Airport and chargesheet in Criminal Case No.6564/2020 under Section(s) 465/466/468/471 IPC and Section 11 of the Aircraft Act pending before Learned ACMM, Patiala House Courts, Delhi and all the other proceedings emanating therefrom are quashed.

17. The petition along with pending application is disposed of.

SAURABH BANERJEE, J.

AUGUST 31, 2023

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