IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 282 of 2019

Shri Bachhraj Bamalwa

Vs

Assistant Director of Income Tax (Investigation), Unit – 3 (1),

Kolkata.

For the Petitioner : Mr. Souvik Mitter.

For the Opposite Party/Income Tax : Mr. Anirban Mitra.

Hearing concluded on : 26.02.2024

Judgment on : 03.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being Complaint Case No. C-1522 of 2018 under Sections 276C(1) and Section 277 of the Income Tax Act, 1961, read with Section 120B of the Indian Penal Code, now pending before the Court of the Chief Judicial Magistrate, at Alipore, South 24 Parganas, and all orders passed therein.

2. The petitioner states that the petitioner runs a reputed business house which deals in jewelry and precious stones under the name and style of "Nemichand Bamalwa & Sons". The petitioner and even prior to him, his forefathers, had been in the said trade for the last few decades.

3. The petitioner states that the petitioner has been maliciously arraigned as an accused person in the impugned case, which was initiated at the behest of Assistant Commissioner of Income Tax i.e. the opposite party herein.

4. Several search and seizure operations were carried out at the business premises of the petitioner.

5. **The allegations in the complaint are that:-**

> *The accused person runs various types of businesses under different names. Search and seizure operations were conducted under Section 132 of the Income Tax Act, 1961 at the business premises of M/s. Nemichand Bamalwa & Sons, M/s. Nemichand Bamalwa & Sons Jewellers Pvt. Ltd., Bamalwa Finance Pvt. Ltd., Easy Commodities Trade Pvt. Ltd., Bamalwa Diamonds Ltd. at*

16A, Shakespeare Sarani, Kolkata – 700 071 by the complainant.

6. *It is further alleged that the accused person was a beneficiary of a penny scrip company M/s. Twenty First Century (India) Limited, incorporated, listed and designated to provide pre-arrange bogus Long Term Capital Gain/Short Terms Capital Loss in order to evade taxes. This company is a CSE listed company and is controlled and managed by Entry Operators Sri Anil Khemka and Rajendra Bubna who engaged the accused person in 2004. There is no registered office of M/s Twenty First Century (India) Ltd. It is only on paper that it has its registered office at 9, Lalbazar Street, Block B, 3rd Floor, Room No. 4, Kolkata – 700 001. All the directors are dummy. It is an investment company used for providing accommodation entry. The CSE banned this scrip in 2005. In 2007, suspension was revoked and due to limits on trading, rise in the price of scrip, no significant upward movement was there. Later, in 2011, four companies (which existed only on paper) were merged into M/s. Twenty First Century (India) Limited. Before the merger, client/beneficiaries of pre-arranged bogus LTCG were allotted shares of Astha Tradelink Pvt. Limited, Highland Dealcom Pvt. Limited, Dignity Suppliers Pvt. Limited and Sarathi Dealers Pvt. Limited. These companies were controlled and managed by Sri Anil Khemka. By this scheme of merger, share holders of these companies got 38 shares of M/s. Twenty First Century (India) Limited in lieu of one share. After*

passing of one year, the beneficiary was provided exit where counter party client on CSE, which were companies only on paper were controlled by Anil Khemka or other entry operators. At the time of exit for LTCG, the scrip rate was around 310-30. The source of funds for buying these shares of M/s. Twenty First Century (India) Limited for these companies on paper were unaccounted cash funds of the beneficiaries which was pumped into the various proprietorship concerns or companies (Which exists only on paper) and routed to companies that exist on paper or exist providing concerns. During this whole process there was no significant change in price of the scrip. Beneficiary was getting 38 times of the shares or to say 38 times of so called invested amount due to merger. Therefore, it is a penny stock and its main purpose was providing pre-arranged bogus LTCG entry.

7. *Blueprint Securities Ltd. is also identified as penny stock which is controlled by Sri Praveen Agarwal and Sri Subhash Agarwal. It is also a company that exists only on paper with dummy directors and it is an investment company used for providing accommodation entry in the form of bogus Long Term Capital Gain (LTCG)/Short Term Capital Loss (STCL). Family members of Nemichand Bamalwa & Sons Group had purchased shares of Blueprint Securities Pvt. Ltd. to convert their unaccounted cash into Long Term Capital Gains.*

8. *The following brokers were involved in Twenty First Century (India) Ltd. from family members of Bamalwa Group.*

i) *Bikash Sureka*

ii) *Ashok Kumar kalyan*

iii) *Shyam Lal Sultana*

iv) *Sajendra Mookim*

v) *K. Prasad & Co.*

vi) *Prakash Nahata & Co.*

vii) *M. Bhiwaniwala & Co.*

Some of them were also working in M/s. Blueprint Securities Ltd. for the benefit of family members of Nemichand Bamalwa & Sons and Group.

There is one more company Jackson Investments Ltd. through which he actually routed his unaccounted wealth and received back in their books as LTCG. Amit Khemka (DIN 00428450), Amaleash Sadhu (DIN 00235198), Purushottam Khandelwal (DIN 00319202) were/are directors of Jackson Investments Ltd.

9. *In the statement given to and recorded under Section 132(4) of the Income Tax Act, 1961, Sri Bachchraj Bamalwa (the petitioner herein) failed to provide any convincing answer.*

10. *From the search and seizure operation, investigation confrontation, fact finding queries and seizures of various books, registers, records and documents, it is established fact that the accused person had received bogus LTCG (Long Term Capital Gain) from 2009-10 to 2013-14 to the tune of (i) Rs. 5,91,65,160/- in penny scrip Twenty First Century (India)*

Ltd. (ii) Rs.6,50,26,749/- in the scrip Jackson Investments Ltd. During the period from the financial year 2009-10 to 2013-14, which was nothing but his own unaccounted income which had been brought back into his books of accounts in the form of bogus LTCG by layering through different shell companies formed exclusively for such purpose and in connivance with entry operators like Anil Khemka and Rajendra Bubna and share broker Sanjay Jain.

11. *In view of the above stated facts, it is crystal clear that Shri Bachchraj Bemalwa (the petitioner herein) willfully concealed his actual income. Therefore, Shri Bachchraj Bamalwa has been accused of falsification of books of accounts of documents, etc. And thereby he is found to have committed an offence in terms of the provisions of the Section 276C(1).*

12. Sri Bachchraj Bamalwa (the petitioner herein) and other family members misguided the Income Tax Department by giving false statement on oath, recorded under Section 132 of the Income Tax Act. Thus, the family members of Nemichand Bamalwa and Sons group violated Section 277(i) of the Income Tax Act are also liable for prosecution under this section.

13. The accused person is also liable to be prosecuted under Section 120B of the Indian Penal Code, 1860 for conspiring with other persons to evade any tax or interest or penalty chargeable or imposable under this Act.

14. The petitioner states that the said complaint was lodged maliciously by the opposite party being fully aware of the fact that throughout the entire length and breadth of the complaint there is nothing to impute any element of mens rea on the part of the petitioner. It is trite law (as held in the case of Prem Dass Vs Income Tax Officer reported in 1999(5) SCC 241) that without the basic element of 'mens rea' being prima facie present in the complaint, no proceeding under the Income Tax Act is maintainable.

15. It is further stated that the Trial Court at the time of taking cognizance was not empowered to try such cases. The Court was vested with the power only on 21.12.2018.

16. The petitioner states that no assessment order under the appropriate provisions of the Income Tax Act 1961 has been passed by the department to indicate that there is a misdeclaration at any point of time by the petitioner and the assessment of the alleged search and seizure is pending for adjudication as on date. Furthermore, no demand of any taxable amount has been raised by the concerned department. Such state of affairs clearly demonstrates the arbitrariness/high handedness of the opposite party in filing the present complaint, that too at a pre-mature stage.

17. The petitioner by way of a supplementary affidavit has stated that challenging the Assessment Order dated 27.12.2019 for Assessment Year 2012-2013, as mentioned hereinabove, the petitioner filed an

appeal, being Appeal No. CIT (A), Dibrugarh/10174/2019-20, before the Commissioner of Income Tax (Appeal), Central, North-East Region, Guwahati [hereinafter referred to as "CIT(A)"]. Further, challenging the Assessment Order dated 27.12.2019 for Assessment Year 2015-2016, the petitioner filed an appeal being Appeal No. CIT (A), Dibrugarh/10185/2019-20 before CIT(A). Vide order dated 10.02.2023 in Appeal No. CIT (A), Dibrugarh/10174/2019-2020, the CIT(A) was pleased to dispose of the appeal, thereby ruling in favour of the petitioner. The CIT(A) was pleased to observe inter alia that the Assessing Officer had not referred to any incriminating material found during the course of search. The CIT (A), upon examining the seized documents and electronic data, was also pleased to observe that no incriminating documents relating to share transaction (as per allegation) was found/seized indicating such transaction to be bogus. The CIT (A) was further pleased to observe that the disallowance of exemption claimed on account of long-term capital gain by treating the same as bogus pre-arranged long-term capital gain was without any reference to any incriminating material found during the course of search. Under such circumstances, the CIT (A) was pleased to observe that the "sole" disallowance made by the Assessing Officer in respect of the impugned Assessment Year was liable to be deleted. Similar order passed by CIT (A) on 10.02.2023 in CIT (A), Dibrugarh/10185/2019-20.

18. Challenging the order dated 10.02.2023, sixteen appeals (being I.T.A. Nos. 51 to 66/Guwahati/2023) have been filed by the Deputy Commissioner of Income Tax before the Income Tax Appellate Tribunal, Kolkata-Guwahati E-Court (hereinafter referred to as the "Learned Appellate Tribunal"). All the sixteen appeals are with respect to the assessment years 2012-13, 2013-14, and 2015-16). Vide judgment dated 01.09.2023, and the Learned Appellate Tribunal was pleased to dismiss the appeals.

19. It is further submitted by the petitioner that vide the judgment dated 01.09.2023 of the Learned Appellate Tribunal in I.T.A. Nos. 51 to 66/Guwahati/2023, the petitioner has been exonerated from the charges of suppressing his actual income during the Assessment Year 2012-2013 (i.e. Financial Year 2011-2012) and the Assessment year 2015-2016 (i.e. Financial Year 2014-15). The foundation of the complaint (which is the subject matter of the instant criminal revisional application), is based on the assessment of the income earned by the petitioner inter alia in the Assessment Year 2012-2013 (i.e. the Financial Year 2011-2012) and Assessment Year 2015-2016 (i.e. the Financial Year 2014-2015). When the appellate forum under the Income Tax Act, 1961 ruled in favour of the petitioner and held that there was no anomaly on his part in disclosing his actual income, then the foundation of the complaint (which has been assailed in this criminal revisional application) stands vitiated.

20. Affidavit in Opposition filed by the opposite party states and reiterates the contents in the written Complaint.

21. It is stated that during investigation the statement of some of the dummy directors were recorded who have confirmed that they are dummy directors of Twenty First Century (India) Limited and other companies and these companies have no real work or business except use for jammakharchi/accommodation entries for various beneficiaries.

The companies that purchased the shares of Twenty First Century India Limited are also jammakharchi/paper companies with weak financial credentials. The statement of Sri Devesh Upadhyay was recorded by the Investigation Directorate, whose companies were majorly used for purchasing share of Twenty First Century (India) Limited and Sri Devesh Upadhyay has deposed that such transaction were not genuine and facilitated for providing bogus LTCG for which he earned some commission. He further stated that such entries were done on the direction of Sri Anil Khemka.

The middleman and the broker who have enabled facilitation of such transaction have deposed before the Investigation Directorate that they have facilitated in providing accommodation entry in the form of pre-arranged bogus LTCG and as per the direction of Sri Anil Khemka.

22. Regarding jurisdiction of the Trial Court the opposite party has relied upon Section 292 Cr.P.C., which provides:-

Provided that a court competent to try offences under section 292,-

(i) which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under this Act after such designation;

(ii) which has not been designated as a Special Court may continue to try such offence pending before it till its disposal;

That till the time there was no designated court, the jurisdictional court i.e Court of Learned Chief Judicial Magistrate could try such offence which was pending before it.

23. It is further stated by the opposite party that both the assessment proceeding and the Criminal proceeding are different in nature and there are catena of decisions of the Hon'ble Supreme Court that the assessment proceeding is different in nature and as such it has no bearing with the Criminal proceeding pending where prima facie case has been made out against the accused person for Commission of offence under Sections 276(1) and 277 of the Income Tax Act, 1971 and Under Section 120B of the Indian Penal Code.

24. It is thus stated that a prima facie case for commission of offence under Sections 276(1) and 277 was made out before the Learned Trial Court against the petitioner and the Learned Magistrate after due consideration was pleased to take cognizance of the matter and issue process against the petitioner.

25. Affidavit in Reply filed by the petitioner reiterates the case of the petitioner as made out in the revisional application and the supplementary affidavit.

26. Written notes of Argument has been filed by both the parties.

27. It is stated by the petitioner that if any assessee is aggrieved by an order of the Assessing Officer, the assessee may resort to the procedure engrafted under Chapter XX of the Income Tax Act, 1961, which deals with "Appeals and Revision", for the purpose of redressing such grievance. In this regard, the important provisions of the Income Tax Act, 1961, which are to be taken into consideration, for the purpose of the instant case, are Sections 246 and 246A. An assessee may contest such notice before the appropriate authority and, if dissatisfied with the findings, of the authority and/or quantum of liability, then such finding may be challenged in appeal under Section 246 of the Income Tax Act. Section 246A of the Income Tax Act provides for the forum of appeal and Section 253 of the Income Tax Act delineates the power of the appellate tribunal and Sections 260A and 261 of the Income Tax Act are powers of the High Court and the Supreme Court respectively in this regard. Chapter XX of the Income Tax Act, 1961 also lays down the hierarchy of the forums for redressal of grievance. The relevant provisions of the Income Tax Act, 1961 in this regard are Section 253 (i.e. Appeals to the Appellate Tribunal), Section 260A (i.e. Appeal to High Court), and Section 261 (Appeal to

Supreme Court). For offences punishable under Sections 276C(i) and 277 of the Income Tax Act, it is essential that the quantum of assessment must be fixed by the authority only after issuance of a demand notice and after offering the assessee a chance of contesting such assessment and on his failure to make the payment, a complaint can be filed by the authority in court. Section 280A and Section 180B of the Income Tax Act delineates the power of the special court and the procedure for trial in such cases.

28. It is further stated that a prosecution can only be launched after penalty has been imposed by the authority after its final assessment and there is a specific finding of the authority on contest that there has been a concealment of fact/suppression of fact. This would require mens rea to be established by the authority after final assessment and not before it.

29. It is further stated by the petitioner that in the instant case, returns were filed in Dibrugarh whereas the complaint was filed in Kolkata. Therefore, there is lack of territorial jurisdiction.

30. The opposite party has relied upon the following rulings:-

i) In ***Standard Chartered Bank and Ors. vs Directorate of Enforcement and Ors., AIR 2006 SC 1301, decided on 24.02.2006,*** the Supreme Court held:-

> *"**34.** The accused has filed these appeals challenging the orders of the High Court of Delhi. Criminal Appeal No. 847 of 2004 is filed by the accused challenging the decision dismissing an application filed by the*

appellant under Section 482 of the Code of Criminal Procedure, by following the decision of this Court in ***Santram Paper Mills Vs. Collector of Central Excise, Ahmedabad*** *[(1998) 8 SCC 335] and* ***taking the view that an adjudication proceeding is independent of the criminal liability under the Act.*** *The contention of the appellant was that since in the adjudication proceedings no penalty was imposed and there was no finding of personal involvement of the appellant, the prosecution had also to be quashed.* ***We have held that the two proceedings are independent of each other and the finding on the adjudication is not conclusive on a prosecution under the Act.*** *Hence, the High Court was fully justified in refusing to quash the proceedings on the ground put forward by the appellant. There is no merit in Criminal Appeal No. 847 of 2004."*

ii) ***Rohit Kumar Nemchand Piparia vs The Deputy Director of Income Tax (Inv), decided on 28.10.2020, Madras High Court.***

iii) ***Radheshyam Kejriwal vs State of West Bengal & Anr., Criminal Appeal No. 1097 of 2003, decided on 18.02.2011.***

iv) ***P. Jayappan vs S.K. Perumal, First Income-Tax Officer, Tuticorin, 1984 AIR 1693, decided on 17.08.1984.***

31. In ***Mahesh Lall vs The Union of India and Ors., in WP.CT/64/2023, decided on 22nd December, 2023,*** the Court held:-

*"**2.** The Supreme Court in the* ***State of Rajasthan and others – vs- Heem Singh*** *in* ***Civil Appeal No. 3340 of 2020*** *decided on 29th October, 2020 held :*

"33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first

embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. ***Disciplinary enquiries have to abide by the rules of natural justice.*** *But they are not governed by strict rules of evidence which apply to judicial proceedings.* ***The standard of proof is*** *hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt,* ***but a civil standard governed by a preponderance of probabilities.*** *Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service.* ***At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact.*** *Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review.* ***To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to***

support the charge of misconduct and to guard against perversity. *But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."*

19. In Civil Appeal No. 5848 of 2021 (Union of India & Ors. vs. Dalbir Singh) the Supreme Court held (relevant paragraphs are reproduced herein):-

> *"**25. This Court in Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors., (2005) 7 SCC 764 held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".***
>
> *It was held as under:*
>
> *"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally*

inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

(Emphasis Supplied)

26. *This Court in* ***Noida Entrepreneurs Association v. NOIDA & Ors. (2007) 10 SCC 385****, held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:*

"11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata Cellular v. Union of India [(1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. U.T., Chandigarh [(2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T.

Srinivas [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

"8. … The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short 'the Evidence Act']. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. … Under these circumstances, what is required to be seen is whether the departmental inquiry would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances."

27. *This Court* ***in Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya & Ors., (1997) 2 SCC 699,*** *held that in the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment. It was held as under:*

"7. …There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

(Emphasis Supplied)

28. *Mr. Yadav, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition before the High Court, the appellants were given opportunity to produce the registers of the entrustment of S.L.R. to the writ petitioner. But it was stated that record was not available being an old record as the incident was of 1993. The enquiry was initiated in 2013 after the acquittal of the writ petitioner from the criminal trial. Therefore, in the absence of the best evidence of registers, the oral evidence of use of official weapon stands proven on the basis of oral testimony of the departmental witnesses.*

29. *The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact,*

the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time."

32. Thus though the petitioner has been exonerated of the charges by the IT Tribunal & Appellate Authority, the parameters in a criminal proceedings are entirely different. When there is prima facie materials for such consideration, the said proceedings should be permitted to proceed towards its logical end through trial.

33. From the materials on record it is thus seen that there is a prima facie case (Para 21 of this judgment) against the petitioner for the trial to proceed and interference at this stage will be an abuse of the process of Court. Considering the nature and magnitude of the alleged offence,

if there are triable issues, the Court, **at this stage** is not expected to go into the veracity of the rival versions. ***(State through Deputy Superintendent of Police Vs R. Soundirarasu Etc.), in Criminal Appeal 1452-1453 of 2022, on 5th September, 2022.***

34. **CRR 282 of 2019 is dismissed.**

35. Trial Court to proceed expeditiously with the trial in accordance with law.

36. All connected applications, if any, stand disposed of.

37. There will be no order as to costs.

38. Interim order, if any, stands vacated.

39. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

40. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)