

**The High Court of Madhya Pradesh Bench at Indore**

Case Number	<b>M.Cr.C. No.3139/2021</b>
Parties Name	Rajendra Kumar Gautam Vs. State of MP
Case Number	<b>M.Cr.C. No.2603/2021</b>
Parties Name	Ishak Khan Vs. State of MP
Date of Order	<b>28/09/2021</b>
Bench	<b><u>Division Bench:</u></b> Justice Sujoy Paul Justice Pranay Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri Arpit Singh, learned counsel for the petitioner in MCRC No.3139/2021.  Shri Shadab Khan, learned counsel for the petitioner in MCRC No.2603/2021.  Shri R.S. Raghuvanshi, learned counsel for respondent/Lokayukt Organisation.
Law laid down	1. <b><u>Departmental inquiry and FIR/Criminal case based on same facts/incident</u></b> – In every case, it cannot be said as a rule of thumb that exoneration in departmental enquiry on merits must result into setting aside of FIR. If it is found on merits that there is no contravention of the provision of the Act in the departmental inquiry, the continuance of trial of person concerned can be treated as an abuse of the process of the Court. 2. <b><u>Departmental inquiry under Central Civil Services (Classification, Control and Appeal) Rule 1965 and provision of Prevention of Corruption Act, 1988 (P.C Act)</u></b> – In the departmental inquiry, there was no scope and occasion for the departmental authority to examine the aspect of

	<p>contravention of provision of the PC Act. Hence, their findings on the merits cannot be treated to be a finding relating to exoneration from the provision of the Act. Hence, FIR cannot be set aside.</p> <p>3. <b><u>Section 7-d (unamended) and section 20 of the P.C Act</u></b> – The provisions are very wide. Section 20 creates legal presumption against the accused, which can be examined and gone into only by the criminal Court. There are cases where the complainant and <i>Panch</i> witnesses have turned hostile yet on the basis of statement of other witnesses, conviction was recorded. Thus, merely because the complainant and another witness, who entered the witness box in the departmental inquiry did not support the prosecution story, FIR and criminal case cannot be jettisoned.</p> <p>4. <b><u>Article 141 of the Constitution of India - Precedent</u></b> – The decision of the Supreme Court must be understood by taking into account the factual context of the matter. The judgment of the Supreme Court should neither be read as a statute or <i>Euclid's</i> theorem.</p> <p>5. <b><u>Precedent</u></b> – A little difference in facts, the additional fact or a different statute applicable in a particular case may make a lot of difference in the precedential value of a decision.</p> <p>6. <b><u>On merits</u></b> – it cannot be said that possibility of petitioners conviction in the criminal case are totally bleak and hence interference is declined.</p> <p>7. <b><u>Practice and Procedure-</u></b> It is the duty of the Courts to give effect to the existing laws wherever applicable and not to pass any order/judgment which runs contrary to law or negativates an existing binding statutory provision.</p>
Significant paragraph numbers	14 to 33

**ORDER**  
(Passed on 28.9.2021)

**Sujoy Paul, J.**

These petitions filed u/S.482 of the Code of Criminal Procedure 1973 (for short "Cr.P.C.") seek to challenge the FIRs and charge sheets on the singular ground that the petitioners, employees of department of CGST and Central Excise were subjected to disciplinary proceedings arising out of a trap/transaction and enquiry officer exonerated both of them which finding got stamp of approval from the disciplinary authority. Hence, FIR and criminal case founded upon the same transaction/trap are liable to be axed.

2. Draped in brevity, the relevant facts as pleaded are that the petitioner Rajendra Kumar Goutam was working as Inspector, CGST, Ujjain whereas other petitioner Ishaq Khan was working in the same department as Head Constable. It is averred in the petition that as per prosecution story, on 31/5/2016, complainant Vikas Sharma submitted a written complaint in the Lokayukta Office, Indore stating that he is Manager of LNR Global Trading Company, Sendhwa and a letter dated 27/5/2016 was issued by the Custom House to CGST office, Indore through fax served on 30/5/2016 for the purpose of conducting office verification of the complainant's office. In relation to this fax communication, complainant came to CGST office, Indore for the verification where he met Rajendra Kumar Goutam and in turn Goutam called other petitioner Ishaq Khan who told the complainant that said letter had not reached their office. As per prosecution story, the petitioner Rajendra Kumar Goutam told the complainant that he would require a taxi for travelling in order to conduct office verification and in addition, complainant will have to give him Rs.30,000/- for getting the verification done. Thereafter, the petitioner introduced the complainant to Superintendent of the said department Shri.R.K. Jain who also demanded a taxi and Rs.30,000/- for conducting the abovementioned verification. During this conversation, petitioner Ishak Khan was also standing there. The

complainant desired that petitioners and co-accused persons should be caught red handed.

3. Acting upon the said written complaint dated 31/5/2016, a trap was conducted and Inspector S.P.S Raghav has handed over a recorder with memory card to the complainant for recording the demand of bribe by the accused persons. The complainant along with constable Kanchan Singh (shadow witness) went to the office where petitioners were working by keeping the voice recorder in "ON" mode secretly. The complainant met Shri R.K. Jain, Superintendent (co-accused) in the said office. During the conversation, complainant requested said Shri Jain to reduce the amount of bribe and complainant offered Rs.15,000/- for completion of said work. As per prosecution story, Shri. Jain agreed. After said conversation was recorded, voice recorder and memory card were submitted to Lokayukta Office, Indore. The shadow witness constable Kanchan Singh was standing in gallery while conversation was being recorded by the complainant. The complainant brought the recorded conversation along with Rs.8000/- to Inspector, Lokayukta, Indore. As per prosecution's case, the recorded conversation revealed that co-accused R.K. Jain has agreed that verification process will be conducted on receiving Rs.15,000/- as bribe. In turn, Inspector S.P.S Raghav asked to provide two gazetted officers as "panch witnesses". Letter dated 31/5/2016 was sent for this purpose and in turn, panch witnesses were made available.

4. The trap team along with shadow witnesses conducted the trap. The hands of petitioners and co-accused persons were held from their wrists. The petitioner Goutam's hands were put in Sodium Carbonate solution. The solution turned pink. The something happened with co-accused Ishak Khan. The bribe money was found on a table beneath papers. The concerned Inspector seized Rs.7000/- from the table of Rajendra Kumar Goutam and Rs.1000/- from the table of Ishaq Khan.

5. This incident resulted into lodgment of FIR No.32/2016 against Rajendra Kumar Goutam and FIR No.172/2016 against petitioner Ishaq Khan for allegedly committing offence u/Ss.7,13(1)(D) and 13(2) of **Prevention of Corruption Act, 1988** (for short “PC Act”) r/w. 120-B of IPC in Police Station “Vipustha”, Bhopal. It is common ground in both the matters that arising out of same trap and incident both the petitioners were subjected to disciplinary proceedings conducted under Rule 14 of CCS (CCA) Rules, 1965. the enquiry officer, after recording the evidence of the parties, prepared a detailed report and exonerated both the petitioners. The reports of enquiry officer were considered by the disciplinary authority and said authority by orders dated 23/9/2020 and 30/10/2019 (Annexure P/2) respectively accepted the enquiry officer’s report and exonerated the petitioners on merits.

6. Both the learned counsel for petitioners placed heavy reliance on a recent judgment of Supreme Court in *Ashoo Sundarnath Tiwari Vs. Dy.Superintendent of Police (Cr.Appeal No.5/2020)* and urged that the Apex Court after considering the previous judgments in the case of *P.S.Rajya Vs. State of Bihar (1996) 9 SCC 1* and *Radheshyam Kejrival Vs. State of West Bengal & another (2011) 3 SCC 581* opined that where the employee is subjected to departmental proceedings on the same factual foundation and stood exonerated on merits, the criminal prosecution on the same set of facts and circumstances cannot be allowed to continue on the underlined principle that criminal case needs higher standard of proof than the departmental enquiry. In such circumstances, the trial of person concerned shall be an abuse of process of court.

7. Shri Arpit Singh, learned counsel for petitioner placed heavy reliance on certain paragraphs of the enquiry report which were considered by disciplinary authority in the order dated 23/9/2020 (Annexure P/2). It is urged that the complainant did not support the

prosecution story before the enquiry officer. Other witness Jagdish Chandra Marmat also did not support the prosecution story. The amount was not recovered from personal possession of this petitioner.

8. Similarly, Shri Shahdab Khan for the other petitioner submits that as per prosecution story, the bribe money was found on a table which alleged to be of the charged officer. However, disciplinary authority categorically recorded that as per the practice prevailing in the department, the Sepoys, Havildars and Head Havildars are not assigned independent tables. The colouring of hands of charged officer alone cannot be a reason for establishing the charge. It is urged by Shri Shadab Khan, learned counsel for petitioner that the report of the work was despatched a day before the date of trap and report was negative. Thus, no misconduct and offence is made out.

9. Shri R.S. Raghuvanshi, learned counsel for the Lokayukt organisation submits that the judgment of Supreme Court in *Ashoo Sundarnath Tiwari (supra)* is of no assistance to the petitioners because: 1) the said judgment is based on a previous judgment of Supreme Court in *P.S. Rajya (supra)*. This judgment has no precedential value in view of judgment of Supreme Court in the case reported in *(2012) 9 SCC 685, State (NCT of Delhi) vs. Ajay Kumar Tyagi*. 2) In none of the judgments on which reliance is placed by the petitioners, the delinquent employee/accused person was facing prosecution under the P.C. Act. The P.C. Act is a special and peculiar statute where there exists a presumption of guilt on the accused person. This aspect and other statutory provisions of P.C. Act were not subject matter of consideration in the judgments cited by petitioners. 3) The judgment of *Radheshyam Kejriwal (supra)* was delivered by a 3 judge bench of Supreme Court. Two judges have taken a different view which is relied upon by Supreme Court in *Ashoo Sundarnath Tiwari (supra)*, whereas *P. Satashivam, J.* took a dissenting view.

Thus, this view on which reliance is placed, at best can be said to be a view of two judges and not of the entire bench of three judges.

10. The judgment of *Ajay Kumar Tyagi (supra)* is a larger bench decision wherein question specifically referred was answered and this authoritative pronouncement of *Ajay Kumar Tyagi (supra)* has not been considered in *Ashoo Sundarnath Tiwari (supra)*. Thus, in view of *special bench* judgment (5 judges) of this Court reported in *2003(1)MPLJ 513, Jabalpur Bus Operators Association & Ors. vs. State of MP & Ors.*, the judgment of *Ajay Kumar Tyagi (supra)* should be treated as a binding precedent which has escaped notice in *Ashoo Sundarnath Tiwari (supra)* and hence the *ratio decidendi* of *Ajay Kumar Tyagi (supra)* must be followed.

11. Pertinently, both the parties addressed the Court on the aspect of *ratio decidendi, per incuriam* and *obiter dicta*. Reliance is placed by respondent on *(2020) 4 SCC 1 (Dr. Shah Faesal & Ors. vs. Union of India & Anr.)* and *(2015) 2 SCC 189 (Hyder Consulting (UK) Limited vs. Governor, State of Orissa through Chief Engineer)*. The contention of Shri Raghuvanshi is that the judgment of *P.S. Rajya (supra)* did not have any precedential value and judgment of *Radheshyam Kejrival (supra)* does not help the petitioners. During the course of arguments, Shri Raghuvanshi, learned counsel for petitioner strenuously contended that prosecution has serious doubts on the date of report allegedly sent/dispatched a day before the date of trap. By leading evidence, prosecution will be able to establish that the defence is based on fabricated/doctored documents. The prosecution cannot be deprived from prosecuting the petitioners by leading cogent evidence.

12. Parties confined their arguments to the extent indicated above.

13. We have heard the parties at length and perused the record.

14. Indisputably, in the judgment of *Ashoo Sundarnath Tiwari (supra)*, the Apex Court placed reliance on its previous judgments

delivered in the case of *P.S. Rajya (supra)* and *Radheshyam Kejrival (supra)*. It is noteworthy that judgment of *P.S. Rajya (supra)* was cited before the Supreme Court along with another judgment on the same subject matter i.e. *Kishan Singh vs. Gurpal Singh (2010) 8 SCC 775*. A bench noted the conflict of opinion between 2 judge bench decisions of Supreme Court and decided to refer the matter for consideration by a larger bench and while doing so observed as under:-

“The facts of the case are that the respondent has been accused of taking bribe and was caught in a trap case. We are not going into the merits of the dispute. However, it seems that there are **two conflicting judgments** of two Judge Benches of this Court: (i) **P.S. Rajya vs. State of Bihar** reported in (1996) 9 SCC 1, in which a two Judge Bench held that if a person is exonerated in a departmental proceeding, no criminal proceedings can be launched or may continue against him on the same subject matter, (ii) **Kishan Singh Through Lrs. Vs. Gurpal Singh & Others** 2010 (8) SCALE 205, where another two Judge Bench has taken a contrary view. We are inclined to agree with the latter view since a crime is an offence against the State. A criminal case is tried by a Judge who is trained in law, while departmental proceeding is usually held by an officer of the department who may be untrained in law. However, we are not expressing any final opinion in the matter.

In view of these conflicting judgments, we are of the opinion that the **matter has to be considered by a larger Bench.**”

(emphasis supplied)

15. A three judge bench considered the question referred to it and decided the same in the case of *Ajay Kumar Tyagi (supra)*. The larger bench opined as under:-

“15. Now we proceed to consider the question of law referred to us, i.e., **whether the prosecution against an accused, notwithstanding his exoneration on the identical charge in the departmental proceeding could continue or not!**

The aforesaid illustrations do not contemplate that on exoneration in the departmental proceeding, the



criminal prosecution on the same charge or evidence is to be quashed. However, this Court quashed the prosecution on the peculiar facts of that case, finding that the said case can be brought under more than one head enumerated in the guidelines.

19. **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.**

20. **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.**

(emphasis supplied)

16. In para 21 of the judgment of *Ajay Kumar Tyagi (supra)*, it was poignantly held that the decision in *P.S. Rajya (supra)* was referred on peculiar facts obtaining therein. Reliance was placed on the judgment of Supreme Court in *State vs. M. Krishna Mohan (2007) 14 SCC 667*. The relevant portion reproduced of judgment of *Ajay Kumar Tyagi (supra)* referring about *P.S. Rajya (supra)* reads as under:-

**“33. The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding *ipso facto* would lead to a judgment of acquittal in a criminal trial.”**

(emphasis supplied)

17. At the last, the larger Bench formed its opinion as under:-

**“24. In our opinion, the reliance of the High Court on the ruling of P.S. Rajya was totally uncalled for as the factual situation in that case was entirely different than the one prevalent here in this case.”** 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 can not be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.**

25. 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.**”

(emphasis supplied)

18. In view of aforesaid finding of larger bench in *Ajay Kumar Tyagi (supra)*, we find substantial force in the argument of Shri Raghuvanshi, learned counsel for the respondent that the judgment of *P.S. Rajya (supra)* is of no assistance to the petitioners and the judgment of *Ajay Kumar Tyagi (supra)* was not brought to the notice of the Supreme Court while deciding *Ashoo Sundarnath Tiwari (supra)*.

19. As noticed above, in *Ashoo Sundarnath Tiwari (supra)*, the Apex Court considered its another previous judgment in the case of *Radheshyam Kejrival (supra)*. In this case, there was cleavage of opinion amongst the judges. The majority view was taken by *Prasad* and *Bedi, J.J.* whereas minority view was taken by *P. Sathasivan, J.*, who dissented with majority view substantially. We will be failing in

our duty if we wouldn't take into account the argument of Shri Raghuvanshi that numerical strength of judges in a judgment which took a particular view is a relevant consideration. This contention is advanced to bolster the point that the judgment of *Radheshyam Kejriwal* (supra) must be treated as a judgment of two judges (in view of dissent by one judge) as against the judgment of *Ajay Kumar Tyagi* (supra) delivered by a 03 judge bench taking unanimous view. It is seen that this interesting conundrum came up for consideration before Supreme Court in *(2018) 11 SCC 305 (Shanti Fragrances vs. Union of India & Ors.)*. The Apex Court has already referred this question for determination to a larger bench. Since matter is pending consideration before larger bench, we refrain ourselves to deal with this aspect in this matter.

20. We deem it proper to consider the judgments cited by rival parties and examine their applicability in the facts and circumstances of the present case. In *Radheshyam Kejriwal* (supra) on which reliance was placed by petitioners, the Apex Court has held as under:-

“39. In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. **In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.**”

(emphasis supplied)

21. A careful reading of this para makes it clear that even as per the majority view, the Court opined that the question of contravention of provision of the Act is a relevant factor which needs to be considered while examining the claim of delinquent employee/accused that upon his exoneration in the departmental inquiry, criminal proceedings deserves to be jettisoned. It is important to note that the provisions of the Act for the instant case means provisions of P.C. Act. Indisputably, P.C. Act is a special enactment.

22. A conjoint reading of Section 7 and Explanation d appended to it shows that the provision deals with public servant taking gratification other than legal remuneration and the eventualities when such an act of public servant can be brought to the purview of Section 7 of P.C. Act.

23. Section 20 of P.C. Act creates legal presumption where public servant accepts any undue advantage. Upon fulfilling certain requirements by the prosecution, a legal presumption is created against the government servant.

24. The heading of section itself suggests that a presumption is created by law makers against public servants accepting gratification other than legal remuneration.

25. The learned counsel for the petitioners contended that complainant did not support the prosecution story while deposing statement in the departmental inquiry. One more witness also turned hostile in the departmental inquiry. Pausing here for a moment, it is noteworthy that in none of the cases cited by the parties, the charge against the delinquent employee/accused persons were continued under the P.C. Act. In *Ashoo Sundarnath Tiwari (supra)*, although the appellant therein was initially charged for committing offence under the P.C. Act, the Special Judge by order dated 27.06.2012 found that no sanction was taken under the P.C. Act against the appellant therein and, therefore, he was discharged from the offences under the P.C. Act. The Apex Court discharged the appellant from the offences under the Penal Code.

26. The provision aforesaid of P.C. Act is differently worded and creates a presumption against the accused. Even in cases where accused person has turned hostile or even died, conviction of a person is possible on the basis of statements of other witnesses including *panch* witnesses. This aspect was considered by Apex Court in *N. Narsinga Rao vs. State of A.P. (2001) 1 SCC 691*. In the said case,

both the complainants and even *panch* witnesses had turned hostile. The argument of accused persons that prosecution can succeed in establishing the demand only when complainant supports their case was repelled by considering the expression 'shall presume' employed in Section 20(1) of the said Act. Direct evidence is held to be only one of the modes through which a fact can be proved. However, that is not the only mode envisaged in the Act. It was further held that other circumstances, which could be proved in a case and those proceeding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the Court to draw the factual presumption that accused had willingly received the currency notes. In this view of the matter, we find substance in the argument of Shri Raghuvanshi that findings of inquiry report accepted by Disciplinary Authority are solely based on the statement of complainant and another witness namely, Shri Mimrot, whereas in the criminal case, the prosecution intends to produce 21 witnesses including *panch* witnesses and other witnesses. Thus, it cannot be said that if prosecution is permitted to proceed with criminal cases, it will be a futile exercise. If we hold otherwise, Section 20 of P.C. Act, legislative intent and mandate behind it will pale into insignificance. It is the duty of the Courts to give effect to the existing law wherever applicable and not to pass any order/judgment which runs contrary to law or negativates an existing binding statutory provision. Putting it differently, Clause d of Section 7 of PC Act is wide enough and covers even such persons, who are not in a position to do a particular act.

27. The argument of learned counsel for the petitioners is based on Clause-vii of para 38 of judgment of *Radheshyam Kejriwal (supra)* which was quoted with profit in the case of *Ashoo Sundarnath Tiwari (supra)*. It is apposite to note the findings in *Ashoo Sundarnath Tiwari (supra)* which reads thus:-

“From our point of view, para **38(vii)** is **important** and if the High Court had bothered to apply

his parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated.

8. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22.10.2011, **the chances of conviction in a criminal trial involving the same facts appear to be bleak.**

We, therefore, set aside the judgment of the High Court and that of the Special Judge and discharge the appellant from the offences under Penal Code.

9. The appeal is disposed of accordingly.”

(emphasis supplied)

28. The Clause – vii of para 38 was applied by the Supreme Court *to the facts of the case of Ashoo Sundarnath Tiwari (supra)*. It was clearly held that as per the facts of the case, the chances of conviction in a criminal trial involving the same facts appear to be bleak. On this basis, the interference was made by Supreme Court.

29. The Apex Court in *Radheshyam Kejrival (supra)* in para 38 opined that the finding in adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. The nature of finding of inquiry officer/disciplinary authority in the present cases shows that the whole finding is based on the statement of complainant and Shri Mimrot. The prosecution in the criminal case has based its case on various other witnesses including 'panch' witnesses etc. Thus, upon considering the provisions of P.C. Act mentioned herein above, we are unable to hold that chances of conviction of petitioners in the criminal trial involving the same facts are totally bleak. We are unable to hold that the nature of findings mentioned in the order of disciplinary authority forms any legal impediment for proceeding with the criminal case. Thus, in our view, even the judgment of *Radheshyam Kejrival (supra)* and *Ashoo Sundarnath Tiwari (supra)* cannot be read in the manner suggested by learned counsel for the petitioners.

30. At the cost of repetition, we would like to lay emphasis on para 39 of the judgment of *Radheshyam Kejrival (supra)* wherein in no

certain terms it was held that where exoneration on merits establishes that there is no contravention of the provisions of the Act, the trial can be interfered with. There was neither any occasion for the departmental authorities to examine the aspect of violation of provisions of P.C. Act, the presumption clause etc in the departmental inquiry nor their findings can be read to hold that no contravention of provisions of the Act namely, P.C. Act is established. In the domestic enquiry, the culpability of petitioners were examined on the touchstone of conduct rules based on limited evidence produced in the enquiry. In the criminal case, Court will examine the evidence in the light of provisions of P.C. Act. Court is empowered to summon witnesses and in their absence, issue warrant to secure their presence for the purpose of recording their statements in order to separate the wheat from chaff.

31. This is equally trite that the judgment of Supreme Court cannot be read as a statute. [See: *(2006) 1 SCC 638 Sarat Chandra Mishra & Ors. Vs. State of Orissa & Ors.*]. In *(2016) 3 SCC 762 (Vishal N. Kalsaria vs. Bank of India & Ors.)*, it was ruled that:-

“33. It is a well settled position of law that a word or sentence cannot be picked up from a judgment to construe that it is the *ratio decidendi* on the relevant aspect of the case. It is also a well settled position of law that a judgment cannot be read as a statute and interpreted and applied to fact situations.”

(emphasis supplied)

32. Similarly, the decision of Supreme Court should be understood by keeping into account the factual context in mind. [See: *(2002) 3 SCC 533 (Padma Sundara Rao & Ors. vs. State of T.N. & Ors.)*, *(2002) 3 SCC 496 (Haryana Financial Corpo. & Anr. vs. Jagdamba Oil Mills & Anr.)*, *(2006) 1 SCC 368 (Union of India & Anr. vs. Major Bahadur Singh)*]

33. This is equally settled that little difference in facts, an additional fact or a different statute applicable in a given case may make a lot of

difference in the precedential value of a decision. [See: *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors. (2003) 2 SCC 111*]

34. As analyzed above, in the facts and circumstances of this case, we are unable to hold that exoneration of petitioners in the departmental inquiry draws such an iron curtain on the case of prosecution because of which prosecution cannot be permitted to proceed with the criminal case. Hence, no interference is warranted on the FIRs and on the criminal cases by this Court.

35. Before parting with the matter, we deem it proper to clarify that discussion made hereinabove was aimed to decide the question whether finding in the departmental inquiry can foreclose the right of the prosecution to proceed with the FIRs and criminal cases against the petitioners. Any finding/observation made hereinabove shall not have any impact on the merits of the case and the Competent Court shall decide the criminal cases in accordance with law on their own merits.

36. Resultantly, petitions fail and are hereby **dismissed**.

(Sujoy Paul)  
Judge

(Pranay Verma)  
Judge

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