
(2020) 09 RAJ CK 0024

Rajasthan High Court, Jaipur Bench

Case No: Civil Special Appeal (Writ) No. 1274 Of 2014 In Civil Writ Petition No. 1867 Of 1998

State Of Rajasthan And
Ors

APPELLANT

Vs

Phool Singh

RESPONDENT

Date of Decision: Sept. 9, 2020

Acts Referred:

Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 " Section 3(1)(x)#Indian Penal Code, 1860 " Section 34, 302, 307, 387, 392#Arms Act, 1959 " Section 3, 25

Citation: (2020) 09 RAJ CK 0024

Hon'ble Judges: Sabina, J; Chandra Kumar Songara, J

Bench: Division Bench

Advocate: Prakhar Gupta, Dr. Vibhuti Bhushan Sharma, Sandeep Bhagwati

Final Decision: Dismissed

Judgement

Appellant-State has filed the appeal challenging the order dated 29.01.2014 passed by the learned Single Judge, whereby, writ petition filed by the respondent was allowed.

Learned State Counsel has submitted that the learned Single Judge has erred in allowing the writ petition filed by the respondent. Scope of criminal

proceedings and departmental proceedings is different. Merely because the respondent had been acquitted in the criminal case was no ground to set

aside the departmental proceedings. In departmental proceedings, charges levelled against the respondent had been duly proved.

Learned counsel for the respondent, on the other hand, has submitted that charges in the disciplinary proceedings as well as criminal proceedings were

the same. Even the same witnesses had been examined in both the proceedings. Since the respondent had been acquitted in the criminal case, enquiry

report was liable to be set aside. In support of his arguments, learned counsel has placed reliance on S. Bhaskar Reddy & Another Vs. Superintendent

of Police & Another, (2015) 2 SCC 365, wherein it was held as under:

21. It is an undisputed fact that the charges in the criminal case and the disciplinary proceedings conducted against the appellants by the first

respondent are similar. The appellants have faced the criminal trial before the Sessions Judge, Chittoor on the charge of murder and other offence of

IPC and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Our attention was drawn to the said judgment which is

produced at Ext. P-7, to evidence the fact that the charges in both the proceedings of the criminal case and the disciplinary proceeding are similar.

From perusal of the charge-sheet issued in the disciplinary proceedings and the enquiry report submitted by the enquiry officer and the judgment in the

criminal case, it is clear that they are almost similar and one and the same. In the criminal trial, the appellants have been acquitted honourably for want

of evidence on record. The trial Judge has categorically recorded the finding of fact on proper appreciation and evaluation of evidence on record and

held that the charges framed in the criminal case are not proved against the appellants and therefore they have been honourably acquitted for the

offences punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Sections 307

and 302 read with Section 34 IPC. The law declared by this Court with regard to honourable acquittal of the accused for criminal offences means that

they are acquitted for want of evidence to prove the charges.

22. The meaning of the expression ""honourable acquittal"" was discussed by this Court in detail in Inspector General of Police V. S. Samuthiram (2013)

1 SCC 598, the relevant paragraph from the said case reads as under: (SCC p.609, para 24) ""24. The meaning of the expression 'honourable acquittal'

came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* (1994) 1 SCC 541. In that case, this Court has considered the impact of

Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere

acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions 'honourable

acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial

pronouncements. It is difficult to define precisely what is meant by the expression 'honourably acquitted'. When the accused is acquitted after full

consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly

be said that the accused was honourably acquitted.

(emphasis supplied) After examining the principles laid down in the abovesaid case, the same was reiterated by this Court in a recent decision in

Joginder Singh v. UT of Chandigarh (2015) 2 SCC 377.

Respondent by filing the writ petition had challenged the order dated 18.12.1989 vide which he was dismissed from service, order dated 23.08.1990

vide which his appeal filed against the punishment order was dismissed and the order dated 03.06.1994 vide which his review petition was dismissed.

Admittedly in the present case, respondent had faced departmental proceedings as well as criminal proceedings.

Learned Single Judge, while considering the aspect as to whether the charges framed in the departmental proceedings and criminal proceedings were

same and the witnesses examined in both the proceedings were same, has observed as under:

That this brings me to the next argument. The enquiry report has not been placed on record by the petitioner because a copy whereof was not

supplied to him, but the same has also not been produced even by the respondents, though they very much had the same in their possession. What is

produced, is the order of penalty dated 18.12.1989 (Annexure-2) and that order runs into 11 pages. The charges and the gist of statements of

departmental witnesses are reproduced therein. The matter can therefore be considered on that basis. Petitioner has also produced on record copy of

judgment dated 26.11.1994 of learned District & Sessions Judge, Dholpur in Criminal Appeal No.5/1994 - Phool Singh Vs. State of Rajasthan, the

issue can be examined on comparison of two to find out whether the charges therein were same and evidence was led by the same witnesses and

whether the same witnesses were produced in both the proceedings to prove such charges. The first charge in disciplinary proceeding was that the

petitioner on 15.10.1987, while posted at Police Station Mania, after his duty hours, was found roaming in Mania town at about 3.00 PM and snatched

licensee gun of Shivram Kachhi? The second charge was that on that date petitioner accompanied by Lokman Gurjar, in uniform went to Bedia

Mohallah of the Mania town, and demanded the papers of Rajdoot motorcycle from one Mahesh Kumar S/o Shivhare of Village Patpara, Dholpur,

and abused him and demanded Rs.100/- as illegal gratification. He then forcibly snatched the motorcycle having registration No.RJD-7722. The third

charge is that petitioner entered his residential quarter situated in the premise of police station and opened fire from gun of Shivram in defence, which

accidentally hit the projection of the house and thereby projection of the house was broken into pieces and fell down on the members of his family

causing injuries to them.

Perusal of penalty order indicates that it was Mahesh Kumar (PW-7), on whose complaint the proceedings were initiated against petitioner. Now at

the same time, judgment of the District & Sessions Judge, Dholpur dated 26.11.1994 also indicates that the FIR against the petitioner was registered at

the instance of Mahesh Kumar, which was submitted to SHO, Police Station Mania, on 15.10.1987 containing all the three charges of the disciplinary

proceedings, namely, (1) petitioner snatched the licensee gun of Shivram in the state of intoxication, (2) petitioner demanded from Mahesh Kumar the

papers of the motorcycle and illegal gratification and then he forcibly snatched his motorcycle, and (3) the petitioner opened fire from licensee gun of

Shivram, which accidentally turned to cause injuries to his family members. On that basis, FIR No.146/1987 was registered against him for offence

under Sections 392, 387 of the IPC, Section 34 of the Police Act and Section 3/25 of the Arms Act and he was arrested on 15.10.1987.

Thus, if not exactly the same, allegations sought to be proved against the petitioner in the shape of charges under Sections 392, 387 of the IPC, Section

34 of the Police Act and Section 3/25 of the Arms Act, were substantially the same as are in disciplinary proceedings. What is more, not only the

charges are the same but the witnesses produced by the prosecution to prove them, were also same. Witnesses, namely, Omi (PW-1), Kamruddin

(PW-2), Girraj (PW-3), Vijay Kumar (PW-4), Ramesh (PW-5), Radheyshyam (PW-6), Mahesh (PW-7), Krishan Kumar (PW-8), Shivram (PW-9),

Ramdayal Singh ASI (PW- 10), Radayal Constable (PW-11), Ishwari Prasad (PW-12), S.N. Sarin (PW-13) and Bhura (PW-14) have been produced

to prove the charges in the criminal trial. In the departmental proceedings, Omi (PW-1) was produced as PW-8, Kamruddin (PW-2) was produced as

PW-1, Girraj (PW-3) was produced as PW-13, Vijay Kumar (PW-4) was produced as PW-6, Ramesh (PW-5) was produced as PW-2, Mahesh

(PW- 7) was produced as PW-7, Krishan Kumar (PW-8) was produced as PW-9, Shivram (PW-9) was produced as PW-12, Ramdayal Singh ASI

(PW-10) was produced as PW-5, Ramdayal Constable (PW-11) was produced as PW-10, Dr. S.N. Sarin (PW-13) was produced as PW- 14 and

Bhura (PW-14) was produced as PW-4. In the departmental enquiry, the department had produced documents Exhibit P-1 to Exhibit P-16, i.e.

written- report, copy of FIR, entry of rojnamcha, site plan, seizure memo of gun, seizure memo of motorcycle, memo of arrest of petitioner, seizure

memo of stones, medical report re condition of intoxication, and injury- reports of family members of petitioner. All those documents were produced in

the criminal trial as well, though the prosecution has produced certain additional documents also, which is evident from the fact that total 43 documents

were produced in the criminal trial. In those facts, even if some of the witnesses have not supported the case of the department in the disciplinary

proceedings, some have indeed supported the case of the department/prosecution in both the proceedings. This is thus a stark reality that while

petitioner has been dismissed from service relying on the same set of evidence, on which he has been acquitted of the charges by the trial court.

What now remains to be seen in these facts is whether the law laid down by the Supreme Court in Capt. M. Paul Anthony, supra, would apply to the

present case. The Supreme Court in that case held that when proceedings are based on same set of facts, which were sought to be proved by the

same witnesses and the court had already acquitted the accused by rejecting the prosecution story, then the findings recorded against him proving the

charges against him in departmental enquiry, cannot be sustained. The Supreme Court further held that in such facts it would be unjust, unfair and

rather oppressive to allow the findings recorded in departmental enquiry, to stand. It would be instructive to reproduce paras 34 and 35 of the report,

which are as under:-

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the

departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating

articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against

the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery.

They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the

charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire

evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of

the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial

pronouncement with the finding that the ""raid and recovery"" at the residence of the appellant were not proved, it would be unjust, unfair and rather

oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there

being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of

approach and burden of proof, would not be applicable to the instant case.

The Supreme Court in G.M. Tank, supra, again had occasion to consider similar question and their Lordships in para 31 of the report, held as under:-

31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of

difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of

the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid

by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the

same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply.

We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

In Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh - (2004) 8 SCC 200 i,t was held by the Supreme Court that the acquittal by the

criminal court was 'honorable' as it was based on the fact that the prosecution did not produce sufficient material to establish its charge which was

clear from the findings recorded by the criminal court. Similar view has been expressed by a coordinate bench of this court in Khawaju Khan, supra.

Law laid down by the Supreme Court thus fully covers the fact situation of the case in hand. In the light of this view, therefore, impugned orders

cannot be sustained in law.

Thus, it has been duly noticed by the learned Single Judge that the charges levelled against the respondent in departmental proceedings as well as

criminal proceedings were more or less the same and same witnesses had been examined in the criminal trial as well as departmental proceedings.

Complainant Mahesh Kumar had been examined in the criminal trial as well as in the departmental proceedings. In the criminal case, respondent was

acquitted of the charges framed against him. Learned Single Judge, placing reliance on the decisions of the Hon'ble Supreme Court, rightly came to

the conclusion that the impugned orders could not be sustained in the eyes of law in view of the acquittal of the respondent in the criminal proceedings.

Hence, no ground for interference is made out.

Dismissed.