

(2016) 08 MP CK 0029

MADHYA PRADESH HIGH COURT (INDORE BENCH)

Case No: Writ Petition No. 2778 of 2015.

Kailash Chandra Sirvi - Petitioner
@HASH State of M.P. /State

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 24, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 MPLJ 370

Hon'ble Judges: S.C. Sharma, J.

Bench: Single Bench

Advocate: Shri L.C. Patne, learned counsel, for the Petitioner; Shri Sanjay Karanjwala, learned counsel, for the Respondent/State

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.C. Sharma, J. - Shri L.C. Patne, learned counsel for the petitioner.

Shri Sanjay Karanjwala, learned counsel for the respondent/State.

The petitioner before this Court is aggrieved by order dated 23/03/2015 passed by Deputy Inspector General of Police (Security), Madhya Pradesh, Bhopal by which the petitioner has been disqualified from holding the post of Sub Inspector on the ground that the petitioner was subjected to a criminal case even though he has been acquitted by judgment of acquittal dated 08/06/2012.

2. The contention of learned counsel for the petitioner is that the petitioner was serving on the post of Constable in the police department of State of Madhya Pradesh since 03/08/2007. It has been further stated that an advertisement was issued inviting application for the post of Sub Inspector and the petitioner has participated in the Sub Inspector Examination 2013. At the time the petitioner has

submitted his application form, he has disclosed the factum of registration of FIR in which he was involved i.e. FIR No. 353/2009 and finally a criminal case was registered against the petitioner i.e. Criminal Case No. 790/2009 for an offence under Section 498-A of the Indian Penal Code and the petitioner was acquitted vide judgment of acquittal dated 08/06/2012.

3. The petitioner has further stated that he was permitted to participate in the process of selection and the result was declared on 17/12/2014. To the utter surprise of the petitioner, a letter was issued by the respondents on 11/03/2015 wherein the petitioner was informed that he is required to be present on 17/03/2015 before the Screening Committee for character verification.

4. The petitioner did appear before the Screening Committee and the Screening Committee has passed an order dated 23/03/2015 holding that the petitioner is not entitled for appointment to the post of Sub Inspector. The order passed by the respondents reveal that the petitioner, because a criminal case was registered against him in which he has been acquitted for an offence under Section 498-A of the IPC, is not a fit person to hold the post of Sub Inspector of Police.

5. The petitioner's prayer is that as he has been acquitted in respect of offence under Section 498-A of IPC, he is certainly entitled to hold the post of Sub Inspector of Police. He further submits that the petitioner is already serving the police department as a Constable and if he can serve the police department as Constable he can very well serve the police department as a Sub Inspector also.

6. On the other hand, learned counsel for the respondents has argued before this Court that the order passed by the respondent does not warrant any interference by this Court as the petitioner was involved in a case for an offence under Section 498-A of the IPC. It has been further stated that the prosecution has failed to prove the case beyond the reasonable doubts and the petitioner was not acquitted on merits and therefore, he is not entitled for selection to the post of Sub Inspector of Police.

7. Learned counsel for the respondents have also stated that as per the M.P. Police Regulation, a person who has applied for police recruitment should behave in pleasant manner and his past life should be without any blemish and therefore, he cannot be appointed on the post of Sub Inspector as the petitioner has demanded dowry and therefore, an offence under Section 498-A of IPC was registered against him. Hence, the question of appointing the petitioner because a criminal case was registered against him, does not arise. Respondents have prayed for dismissal of the writ petition.

8. Heard learned counsel for the parties at length and perused the record.

9. In the present case, it is an undisputed fact that the petitioner was appointed as Constable in the year 2007 to be more specific on 03/08/2007 and while he was

serving police department, a FIR was registered against the petitioner i.e. FIR No. 353/2009 and subsequently a criminal trial also took place in Criminal Case No. 790/2009 for an offence under Section 498-A of the IPC.

10. The stand of the State Government that the petitioner is not fit to serve the police department as Sub Inspector seems to be ridiculous. The petitioner is already a member of police force and if he can serve the police department on the post of Constable, he can very well serve on post of Sub Inspector of Police in the police department.

11. In the considered opinion of this Court an acquittal is an acquittal. There is no such distinction between acquittal on merits and acquittal on the basis of benefits of doubt.

12. Such type of controversy has already been considered by this Court in the case of Manish Verma v. State of M.P. and others in Writ Petition No. 3560/2014 decided on 16/10/2014. It is pertinent to note that Manish Verma was also involved in an offence under Section 498-A of IPC. He was also denied appointment to the post of Constable and this Court has allowed the writ petition preferred by the Manish Verma.

13. This Court in the case of Manish Verma has passed the following order:-

"A similar controversy regarding interpretation of acquittal came up before this Court and this Court in the case of Rakesh Sharma v. State of Madhya Pradesh and 5 ors. (WP No. 9913/2012) and in the aforesaid case this Court has held as under :-

"The petitioner before this Court has filed this present writ petition for issuance of an appropriate writ, order or direction directing the respondents to appoint the petitioner on the post of Constable General Duty. Petitioner is also aggrieved by order dated 13/7/12 by which the Inspector General of Police has rejected the claim of the petitioner.

In the present case, the petitioner has participated in the process of selection for the post of Constable in the year 2012 and has also submitted a police verification form stating categorically therein that he has been acquitted in S.T.No. 196/2007 on 14/2/2008. The petitioner by virtue of his merit was selected for the post of Constable, however, the appointing Authority as well as the Inspector General of Police have rejected the petitioner's claim for appointment even though he is more meritorious and persons who are less meritorious have been appointed to the post of Constable General Duty. The only reason assigned in the return is that the petitioner as he has been acquitted by giving benefit of doubt in respect of Crime No. 126/2006, cannot be appointed to the post of Constable General Duty.

Learned counsel for the respondents - State has drawn attention of this Court towards paragraphs 53 of the M.P. Police Regulations and his contention is that a person who is seeking appointment on the post of a Constable should bear a good

moral character and therefore, as the petitioner was prosecuted for an offence u/S. 302, 147, 148 and 149 of the Indian Penal Code, he does not bear good moral character, hence the order passed by the Inspector General of Police does not warrant any interference.

This Court is of the considered opinion that once the petitioner has been acquitted, the entire crime registered against him stands wiped out. An acquittal is an acquittal whether it is a "clean acquittal", whether it is "honourable acquittal" or "acquittal based on giving benefit of doubt". The "clean acquittal", the "honourable acquittal" or "acquittal based on giving benefit of doubt" has not been distinguished in the Code of Criminal Procedure. This court in the case of **Smt Panna Mehta v. State of M.P. reported in 2002(4) M.P.H.T. 226** in paragraph 11 and 12 held as under :-

"11. In the Code of Criminal Procedure, Indian Penal Code, Evidence Act or any other enactment, the word, "acquittal" has not been defined. As per the Law Lexicon, the Encyclopaedic Law Dictionary (Edn. 1992) "Acquittal" defined, Act X of 1882, Section 403, "the word acquittal is verbum equivocum and may in ordinary language be used to express either the verdict of a jury, or the formal judgment of the Court, that the prisoner is not guilty". (Per Tindal, C.J., **Burgess v. Boetefeur, 13 LJMC 126 : 135 ER 193**). It is generally said that a party is acquitted by the jury, but in fact, the acquittal is by the judgment of the court (ibid). According to the Oxford Dictionary, "acquittal" means that a person is not guilty of a crime, with which he has been charged. So in a criminal jurisprudence there is no difference between "clean acquittal", "honourable acquittal" or "acquittal based on giving benefit of doubt". When the accused is acquitted by giving benefit of doubt means the prosecution was not able to prove its case beyond doubt.

12. As ruled by the Supreme court in case of **Manni Lal v. Parmai Lal (AIR 1971 SC 330)** and **Dilip Kumar Sharma and others v. State of Madhya Pradesh (AIR 1976 SC 133)**, order of acquittal means a person concerned, has not committed the offence for which he was charged and tried. Criminal Courts are recording acquittal when the prosecution fails to prove its case beyond all reasonable doubt and benefit of doubt given to the accused does not mean that the accused was involved in the case but the same could not be proved by the prosecution. In Criminal Law, words "beyond reasonable doubt" cannot be termed as stigma or proof of any criminal charge against acquitted accused. Therefore, petition for expunging the same is not maintainable under Section 482, Cr.PC and the same is misconceived."

In light of the aforesaid order as the petitioner was acquitted on 09-12-2013 and the character verification took place on 30-01-2014, the question of denying appointment to the petitioner does not arise.

The writ petition stands allowed. Respondents are directed to consider the case of the petitioner and if his name finds place in the merit list, the respondents shall issue a consequential appointment order. The petitioner shall be entitled for all

consequential benefits including the seniority, grant of increments, notional fixation of salary as well as promotion etc. However, will not be entitled for back wages. The respondents will not deny the appointment to the petitioner only because he was involved in a criminal case as he has been acquitted, vide judgment of acquittal dated 09-12-2013."

14. The judgment passed by this Court was subjected to judicial scrutiny as the State Government being dissatisfied by the verdict of this Court preferred a writ appeal. The Division Bench of this Court while dismissing the writ appeal i.e. Writ Appeal No. 73/2015 has passed the following order on 28/07/2015:-

"By this writ appeal under Section 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nyapith Ko Appeal) Adhiniyam, 2005 the appellants are aggrieved by the judgment dated 16.10.2014 passed in W.P. No. 3560/14(S) whereby the petition has been allowed.

02. Briefly stated the facts of the case are that the respondent Manish Verma had applied for the post of Police Constable and participated in the Police Constable Recruitment Test of 2012 conducted by respondent M.P. Professional Examination Board and he had stated on affidavit that there was a matter for offence under Section 498-A of IPC pending before the Judicial Magistrate, First Class, Ujjain. He qualified for the second round and passed the medical test. In the meantime he was acquitted from the case pending against him and hence he filed another affidavit to the concerned authority that he had been acquitted but the respondent Professional Board depending on Government Circular No. F.17-74/2002/C-a dated 5th June, 2003 rejected his appointment since he was involved in an offence of moral turpitude. Being aggrieved by the non-selection respondent Shri Verma filed a WP bearing No. 3560/14(S) whereby it was vehemently urged that a character verification was given by the committee constituted as per guidelines prescribed in the Supreme Court judgment in the matter of Civil Appeal No. 4842/13 SLP No. 38886/12 Commissioner of Delhi v. Meharsingh which had held that if the acquittal in a criminal case was not honourable only then the eligibility would be affected and that the candidate would not be eligible for the police service in which high level of morality is essential.

03. Counsel for the appellant/State has contended that despite having considered the said case, the learned Single Judge allowed the writ petition and directed the Professional Board to issue the consequential appointment order if he was otherwise eligible according to the merit list and the respondent Board could not deny appointment to the petitioner only because he was involved in the criminal case as he has been acquitted vide judgment of acquittal dated 09.12.2013. Counsel submitted that such a finding was contrary to the facts of the case and Counsel placed reliance on Commissioner of Delhi (supra) as well as the another judgment by the Apex Court in the matter of State of M.P. and others v. Parvez Khan [Civil Appeal No. 10613 of 2014] to bolster his submissions. Counsel vehemently urged

the fact that the respondent was charged with offence under Section 498-A of the IPC and the acquittal was not honourable and the police service is a unit force which requires a high degree of morality and integrity and hence the petitioner cannot be considered for appointment.

04. Moreover Counsel submitted that the case of the respondent has been considered by a duly constituted screening committee and a full opportunity of hearing was given to the petitioner and it was the ground of moral turpitude that he is not eligible for the police service. Counsel placed reliance on a Circular of the Govt. dated 05.06.2003 whereby there is a bar for consideration of such person and offence under Section 498-A of IPC has been included in the scheduled offences of moral turpitude at Sl. No. 11 and the Circular has been filed as Annexure A/2 along with the present appeal and Counsel prayed that the learned Single Judge had erred in coming to the conclusion that the acquittal was honourable and that the petitioner was entitled to the appointment. The findings of the Screening Committee were final in this regard and placing reliance on Meher Singh (supra) Counsel submitted that there was no malafides in the proceedings of the Screening Committee and it cannot be assailed in the light of Meher Singh. The Apex Court had also held that the High Court was not justified in interfering while the order of rejecting of the respondent of recruitment of the police service and in this light also Counsel prayed that the judgment of the learned Single Judge be set aside.

05. Per Contra Counsel for the respondent Manish Verma has vehemently urged the fact that in the matter of Rakesh Sharma v. State of MP in WP No. 9913/2012 considered by the learned Single Judge and other cases it was considered that nothing has been suppressed by the respondent Shri Verma and in the police verification form also quite categorically stated that the case was pending against him and subsequently it has resulted in an acquittal. The acquittal is a clean acquittal and hence no interference is called for in the judgment of the learned Single Judge. Moreover Counsel submitted that in the peculiar facts and circumstances of the case the wife had also stated that she had no objection if the applicant was considered for the appointment primarily since the matrimonial dispute had been compromised and they were now living together as man and wife, Counsel prayed that the appeal was without merit and the same be dismissed.

06. On considering the above submissions, we find that the proceedings of the Screening Committee are not barred from judicial scrutiny. The learned Single Judge has come to the conclusion that the proceedings were arbitrary and the acquittal has been honourable. Then under these circumstances we do not find any good ground to interfere with the order passed by the learned Single Judge. Moreover even if the testimony of the wife is considered she has categorically stated in trial Court during the trial that at the time of marriage no dowry was demanded and she has also admitted in impugned para - 12 & 13 of her deposition that the applicant was without a job and she wanted to reside separately with him and the

compromise had been arrived at during the period of trial itself. Moreover she has stated so before this Court also. Then under these circumstances, we find that only question that remains to be considered is whether offence under Section 498-A of the IPC would be one of moral turpitude and the acquittal of the accused has been honourable ?

07. On considering the above submissions and the record we find that the Counsel for the appellants has very vehemently urged the fact that the findings of the Screening Committee could not have been assailed in the writ petition since it was specially constituted body and had considered the case in accordance with the provisions of law. And he relied on the cases of Pervez Khan and Mehar Singh (supra), however we find that even in the said case, the Court had held in impugned para-29 that the Screening committee's proceedings have been assailed as being arbitrary, unguided and unfettered. The Apex Court had also considered the fact that the acquittal of Mehar Singh was based on the compromise, however, disclosure was not made in the said case regarding the enmity and other important facts i.e. Mehar Singh had other criminal cases also recorded against him and in this regard the Apex Court had come to the conclusion that the acquittal was not honourable. Whereas in the peculiar facts and circumstances of the present case, it would be difficult to hold that the acquittal of the respondent Shri Verma was otherwise. On scrutinising the evidence available on record, we find that in the judgment of acquittal, the learned Judge of the trial Court has categorically stated that the demand was not for dowry but a loan had been availed by the respondent and hence the prosecution case had not been established and the accused had been acquitted since the ingredients of offence under Section 498-A of the IPC were not fulfilled; then under these circumstances it would be difficult to hold that the acquittal was not honourable.

08. Consequently we find that the findings of the Screening Committee are open to scrutiny and the learned Single Judge has very correctly considered the evidence on record and to do substantial justice between the parties arrived at the conclusion that the acquittal was not tainted. Moreover the respondent's wife Smt. Verma has also appeared before this Court as well as the trial Court and stated that she was now amicably residing with the respondent Shri Verma and the criminal cases had been compromised and withdrawn. Considering the fact that the compromise was also before the Screening Committee, it ought to have properly interpreted the principles laid down by the Apex Court. Undoubtedly the Screening Committee had to carry out the object of the comprehensive policy of the State and the scheme referred to above and since admittedly the police services demand a high standard of morality; but in the present case to our mind it would be improper to hold that the acquittal was not honourable since there is categorical finding by the trial Court that the respondent Shri Verma was not guilty of the offence of demand of dowry. In these circumstances, we do not find any good ground to interfere in the judgment of the learned Single Judge since in the present case the husband and wife have

reconciled each other after being estranged over matrimonial disputes and it was also in the interest of general public that the matrimonial disputes are required to be settled amicably and the judgment of the learned Single Judge directing the appointment if the respondent Shri Verma is otherwise eligible would go a far way in cementing the matrimonial chords and strengthening the institution of marriage. In this light also no fault can be found with the judgment impugned and it does not call for any interference. The appeal is without merit and the same is dismissed as such."

15. Thereafter, the matter has travelled to the Hon"ble Supreme Court. The Hon"ble Supreme Court has again dismissed the Special Leave Petition i.e. SLP(C) No. 592/2015 (State of Madhya Pradesh and ors. v. Manish Verma and anr.) on 18/01/2016. Meaning thereby, the view taken by this Court in the case of Manish Verma has been upheld by the Division and has not been set aside by the Hon"ble Supreme Court. The State Government has appointed Manish Verma by order dated 23/06/2016.

16. The petitioner in the present case stands on better footing than Manish Verma who was a candidate from open market, whereas the petitioner in the present case is already serving the police department and as also stated earlier if the petitioner can serve the police department on the post of Constable, he can very well serve the police department on the post of Sub Inspector of Police in light of the judgment delivered by this Court.

17. Learned counsel for the petitioner has placed reliance upon a judgment delivered by this Court in the case of Pushpendra Mishra v. State of M.P. in Writ Petition No. 5795/2015 decided on 19/08/2015. The learned Single Judge in the aforesaid judgment has held as under:-

"The authority has rejected the claim of the petitioner for appointment to the post of Constable on the ground that a criminal case was registered against the petitioner. However, authority did not consider the merit of the criminal case. The authority has also not taken into consideration the fact that a counter case was also registered against the complainant party. The petitioner and complainant party are neighbour. The offences are minor in nature. The trial Court already observed that the story put-forth by the prosecution is suspicious. It is a fact that a person who has criminal antecedents cannot be appointed in the police department. However, it has also to be taken into consideration that whether a person was falsely implicated in the case or not. In certain circumstances, there is a possibility that a person may have been falsely implicated in the case. The judgment relied on by the learned PL State of M.P. and others v. Parvez Khan (supra) is distinguishable on facts because in the aforesaid judgment the person was tried in two criminal cases. In one case he was prosecuted for commission of offences under Sections 323, 324, 325, 294, 506-B/34 of IPC and other case under Section 452, 394, 395 of IPC. Certainly commission of offences under Section 394, 395 of IPC is serious offence. The Supreme Court in the

matter of **State of West Bengal and others v. S K. Nazrul Islam reported (2011) 10 SCC 184** has observed in regard to cancellation of appointment of a Constable on the ground that he had submitted false information to the effect that criminal case was registered against him or not as under:

"Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/427/596 IPC, he cannot possibly be held to be suitable for appointment to the post of constable."

The Supreme Court further observed in the matter of Commissioner of Police and ors v. Sandeep Kumar passed in Civil Appeal No. 1430/2007, as under:

"When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives."

Although the matter has been referred by the Supreme court to larger Bench but in my opinion, the observations made in the aforesaid case by the Court are relevant to decide the controversy involved in this case.

The Supreme Court in the matter of **Pawan Kumar v. State of Haryana and another reported in 1996 SCC (4) 17** has observed as under:

"Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people through out the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost along them being traffic, municipal and other petty offences under the India; Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or in experienced person, putting a blast to his life and his dreams. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs. 2000/- or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Government service. This can brook no delay, whatsoever."

From the observation made by the Supreme Court in the aforesaid cases, it is clear that life of the young person to get the job could not be jeopardise merely on the ground that a criminal case was registered against him.

In the present case the petitioner has been acquitted from the offence after trial. The trial Court specifically observed that false implication of the petitioner in the case cannot be not ruled out. As per facts of the criminal case, in which the petitioner was prosecuted there was a quarrel between the parties and thereafter FIR was lodged. A counter case was also lodged against the complainant party.

Regulation 64 of Madhya Pradesh Police reads as under:

64. General Condition of Service- Every candidate for an appointment in the police should be made acquainted, prior to appointment, with the general conditions of police service, which are as follows: -

(1) Each police officer shall devote his whole time to the police service alone. He shall not take part in any trade or calling whatever, unless expressly permitted to do so.

(2) He shall faithfully and honestly use his best abilities to fulfil all his duties as a police officer.

(3) He shall confirm himself simplicity to all rules, which shall, from time to time, be made for the regulation and good order of the service. And shall cultivate a proper regard for its honour and respectability.

(4) He shall submit to discipline, observe subordination and promptly obey All lawful orders.

(5) He shall serve and reside wherever he may be directed to serve and reside.

(6) He shall wear, when on duty, such dress and accouterments as shall, from time to time, be prescribed for each rank of the service and shall be always neat and clean in his appearance. At no time shall any police officer appears partly in uniform and partly in mufti.

(7) He shall allow such deductions to be made, from his pay and allowances as may be required for kit, quarters and the like, under the rules of the service.

(8) He shall promptly discharge such debts as the Superintendent may direct and shall not without the Superintendent's permission, have money transactions with any other police officer, or borrow money from a resident of the district in which he is employed.

(9) He shall not withdraw from the service without distinct permission in writing, or (in the absence of such permission) without giving two months' previous warning of his intention to do so.

(10) He shall not on any occasion or under any pretext, directly or indirectly take or receive any present, gratuity or fee from any person what so ever, without the sanction of the Superintendent.

(11) He shall act with respect and deference towards all officers of Government and with forbearance, kindness and civility towards private persons of all ranks. In private life he shall set an example of peaceful behaviors and shall avoid all partisanship.

(12) On ceasing to belong to the force, he will immediately deliver up all kit and accouterments, and vacate any quarters that have been supplied to him at the public cost.

From the facts of the case, conclusion cannot be drawn that the petitioner was not suitable candidate to be appointed in police service.

In my opinion, the authority did not consider the case of the petitioner in proper perspective and rejected the candidature of the petitioner only on the ground that the petitioner was tried for commission of offence. This approach of the authority is not proper.

Consequently, the petition filed by the petitioner is allowed. The impugned order dated 24.3.2015, (Ann. P-5) is hereby quashed. It is ordered that the petitioner be given appointment on the post of Subedar, Sub-Inspector cadre and Platoon Commander in pursuance to his selection within a period of four weeks from the date of receipt or copy of this order. The petitioner shall not be eligible to receive arrears of salary but he shall be entitled to get benefit of seniority and other benefits from the date of his initial appointment on which date other persons were appointed in pursuance to same selection to the post of Subedar, Sub-Inspector cadre and Platoon Commander.

No order as to costs."

18. In light of the judgment delivered in the case of Pushpendra Mishra, this Court is of the considered opinion that the petitioner is certainly entitled for appointment on the post of Sub Inspector and the factum of registration of criminal case and his consequential acquittal, by no stretch of imagination will come in the way of his appointment.

19. The Hon''ble Supreme Court in the case of **Joginder Singh v. Union Territory of Chandigarh and Others reported in (2015) 2 SCC 377** from paragraphs No. 15 to 27 has held as under:-

"15. To answer the point No. 1, we must first consider whether the acquittal of the Appellant from the criminal case was an honourable acquittal. It is the contention of the Respondent that even though the Appellant was acquitted in the criminal case, the appointment of the Appellant by the appointing authority to the post of

Constable in Chandigarh Police, which is a disciplined force was not desirable. The High Court has held that what would be relevant is the conduct and character of the candidate to be appointed in the service of state police and not the actual result thereof in the criminal case as claimed by the Appellant. Further, the relevant consideration to the case is the antecedents of the candidate for appointing him to the post of Constable.

16. However, advertent to the criminal proceeding initiated against the Appellant, we would first like to point out that the complainant did not support the case of the prosecution as he failed to identify the assailants and further admitted that the contents of the Section 161 of Code of Criminal Procedure statement were not disclosed to him and his signatures were obtained on a blank sheet of paper by the Investigation Officer. Further, Sajjan Singh, who was an eyewitness of the case, who was also injured, had failed to identify the assailants. Both the witnesses were declared hostile on the request of the prosecution.

17. The learned Additional Sessions Judge, Bhiwani held that the prosecution case has not been able to prove in any way the allegations against the Appellant. Thus, the learned Judge held that the prosecution had miserably failed to prove the charges levelled against the Appellant in the criminal proceedings. Therefore, we are in agreement with the findings and judgment of the learned Additional Sessions Judge and are of the opinion that the acquittal of the accused from the criminal case was an honourable acquittal.

18. Learned Counsel has rightly placed reliance upon the decision of this Court in **Deputy Inspector General of Police and anr. v. S. Samuthiram** of which relevant para is extracted 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*. 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)

19. Further, an acquittal of the Appellant is an "honourable" acquittal in every sense and purpose. Therefore, the Appellant should not be deprived from being appointed

to the post, in the public employment, by declaring him as unsuitable to the post even though he was honourably acquitted in the criminal case registered against him.

20. Further, undisputedly, there has been no allegation of concealment of the fact that a criminal case was registered against him by the Appellant. Thus, the Appellant has honestly disclosed in his verification application submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case, he cannot be denied an opportunity to qualify for any post including the post of a Constable.

21. Reliance has been placed on the decision of this Court in **Secretary, Deptt. of Home Secy., A.P. v. B. Chinnam Naidu** which states herein: (SCC p. 750, para 9)

"9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a Court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate Court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a Court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the Respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the Respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned Counsel for the Appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the Respondent cannot be found guilty of any suppression."

(Emphasis laid by this Court)

22. Further, reliance has been placed by this Court in **Commr. of Police, Delhi and anr. v. Dhaval Singh** wherein it is stated as under: (SCC pp. 248-49, para 6)

"6. Learned Counsel for the Appellants has drawn our attention to a judgment rendered by a Bench of this Court on 4-10-1996 in *Delhi Admn. v. Sushil Kumar*. On the first blush, that judgment seems to support the case of the Appellants but there is a material difference between the two cases. Whereas in the instant case, the Respondent has conveyed to the Appellant that an inadvertent mistake had been committed in not giving the information against the relevant column in the Form

much before the cancellation of his candidature, in Sushil Kumar case no such correction was made at any stage by the Respondent. That judgment is, therefore, clearly distinguishable on facts."

23. Further, a bare perusal of Rules 12.12, 12.14 and 12.18 of the Rules, which would indicate that the recruit should be of a good character and suitability. The said Rules are extracted hereunder:

"Rule 12.12: Supervision of recruitments.- The standard of performance and the reputation of the whole police force depend above all upon the quality of its Constables. Standards for recruits are laid down in the rules which follow, but, over and above these, constant attention and effort to raise the general standard of recruitment are essential. Gazetted officers shall at all times devote special attention to discovering and encouraging men of a thoroughly good stamp to enroll themselves. Efforts shall be made to enroll a proportion of men belonging to communities or classes, whose representation in the force is desirable, but who appear reluctant to offer themselves. The examination and measuring of candidates for enrolment shall invariably be carried out by a gazetted officer, who shall concern himself specially to prevent the victimisation of, or the taking of illegal gratification from, candidates by subordinate Government servants concerned in the conduct of their examination. Superintendents shall personally satisfy themselves that the arrangements for the reception of new recruits in the Lines, and for providing them with bedding and warm clothing, whether as a sanctioned Government issue or under a system whereby the cost is recovered later in instalments from pay, are adequate, and that recruitment is not discouraged by initial and avoidable hardships. Deputy Inspectors General, in addition to exercising a careful control over recruitment generally, and preventing the enrolment of undesirable types, shall, at their inspections, formal and informal, pay special attention to the observance of this rule.

* * *

Rule 12.14 Recruits-Status of. - (1) Recruits shall be of good character and great care shall be taken in selection men of a type suitable for police service from candidates presenting themselves for enrolment.

* * *

12.18 Recruits verification of character of.

- (1) The character and suitability for enrolment of every recruit shall be ascertained by a reference to the lambardar of the village or ward member of the town of which the recruit is a resident. A search slip shall also be sent to the Finger Print Bureau in order to establish his freedom or otherwise from conviction. Such lambardar or ward member shall, if the recruit is of good character, furnish a certificate to that effect which shall be verified and attested by the sub-inspector in charge of the local

police station. The Sub-Inspector shall be complete the information required by form 12.18 (I)."

It is the submission made on behalf of the Respondents that the above referred rules lay down the criteria that clean antecedents and good moral character is indispensable for a candidate to even fall within the zone of consideration.

24. However, in the present case, we have observed that the Appellant was involved in a family feud and the FIR came to be lodged against him on 14.04.1998, after he had applied for the post of Constable. Further, he had been acquitted on 04.10.1999, i.e. much before he was called for the interview/medical examination/written test. Further, as per Rule 12.18, emphasis has been laid on the freedom and otherwise from conviction. An interpretation of the Rules referred to supra clearly indicate that an acquittal in a criminal case will qualify him for appointment to the post of Police Constable, as the Appellant had successfully qualified the other requisites required for his selection. Thus, as rightly pointed out by the Trial Court that as the prosecution has failed to prove the charges against the Appellant by adducing cogent evidence, therefore, the Police authorities cannot be allowed to sit in judgment over the findings recorded by the Sessions Court in its judgment, wherein the Appellant has been honourably acquitted. Denying him the appointment to the post of a Constable is like a vicarious punishment, which is not permissible in law, therefore, the impugned judgment and order passed by the High Court is vitiated in law and liable to be set aside.

25. Further, apart from a small dent in the name of this criminal case in which he has been honourably acquitted, there is no other material on record to indicate that the antecedents or the conduct of the Appellant was not up to the mark to appoint him to the post. The Appellant was also among the list of the 40 selected successful candidates, who had fulfilled all the other requirements of the post. Reliance has been placed on the decision of this Court in Jagtar Singh v. CBI, which states as under: (SCC pp. 50-51, para 4)

"4...It is not necessary for us to go into the question as to whether the claim of privilege by the Respondents is justified or not. We also do not wish to go into the details of the investigations made regarding the antecedents and character of the Appellant. We have carefully examined the material on the basis of which the Respondents have come to the conclusion that the Appellant is not suitable for appointment to the post of Senior Public Prosecutor in the Central Bureau of Investigation and we are of the view that the Respondents are not justified in reaching a conclusion adverse to the Appellant. No reasonable person, on the basis of the material placed before us, can come to the conclusion that the Appellant's antecedents and character are such that he is unfit to be appointed to the post of Senior Public Prosecutor. There has been total lack of application of mind on the part of the Respondents. Only on the basis of surmises and conjectures arising out of a single incident which happened in the year 1983 it has been concluded that the

Appellant is not a desirable person to be appointed to the Government service. We are of the view that the Appellant has been unjustifiably denied his right to be appointed to the post to which he was selected and recommended by the Union Public Service Commission."

26. Thus, we are of the opinion that the alleged past conduct of the Appellant in relation to the criminal case will not debar or disqualify him for the post of the Constable for which he was successfully selected after qualifying the written test, medical test and the interview conducted by the selection authority. Further, as stated by us earlier, there has been no concealment of any relevant fact from the Respondents by the Appellant. The Respondents were thus not justified in denying the said post to the Appellant. The conclusion arrived at by them is not cogent and lacks proper application of mind.

27. We therefore, hold that the High Court has committed a grave error both on facts and in law and it has failed to follow the legal principles laid down by this Court in the cases referred to supra and uphold the decision of the CAT. For the foregoing reasons both the appeals succeed and are allowed."

20. In light of the aforesaid judgment delivered by the Hon"ble Supreme Court, this Court is of the considered opinion that the registration of FIR and acquittal in a criminal case for an offence under Section 498-A of IPC will certainly not at all debar the petitioner to hold the post of Sub Inspector of Police for which he has been successfully selected after qualifying written test, medical test and the interview conducted by the authorities.

21. Resultantly, as the petitioner"s name finds place in the merit list, the respondents are directed to issue an appointment order in favour of the petitioner within 90 days. The petitioner shall be entitled for all consequential benefits including seniority, grant of increments, notional pay fixation of salary as well as promotion, however, he will not be entitled for back wages. The respondent will not deny appointment to the petitioner only because he was involved in a criminal case and has been acquitted vide judgment dated 08/06/2012.

22. The exercise of passing necessary orders and taking all consequential action be completed within a period of 30 days from today. It is made clear that in case, the order passed by this Court is not complied with within a period of 90 days, the petitioner shall be entitled for full back wages from the date other identically placed persons have been appointed on the basis of selection which took place on the basis of selection of the year 2013.

23. With the aforesaid, writ petition stands allowed with a cost of Rs. 10,000/-.

24 Certified Copy as per rules.