Tathagata Parui Vs The State of West Bengal

Court: Calcutta High Court

Date of Decision: March 31, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 164, 235(1)
Penal Code, 1860 (IPC) â€" Section 363, 366

Citation: (2014) 2 CALLT 439 : (2014) 5 CHN 273

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Anjan Bhattacharya and Kamal Misra, Advocate for the Appellant; Anami Sikdar, Mirza Kamruddin and Rajib Acharya, Advocate for the Respondent

Judgement

Biswanath Somadder, J.
The only issue that falls for consideration in the facts and circumstances of the instant case is whether the

petitioner has been honourably acquitted or not, in terms of Rule 13(a) of the West Bengal Primary Education (Conduct of Service of Teachers of

Primary Schools) Rules, 2001, after being acquitted by the learned Sessions Judge, Purba Medinipur, upon pronouncement of judgment on 19th

September, 2013, in respect of S.C. No. 324/Nov./12; S.T. No. 16/Feb. 2013. The factual matrix of the present case is that the petitioner was

appointed on 3rd March, 2010, as a primary school teacher of Ghoshpur Primary School, situated within the jurisdiction of the District Primary

School Council, Purba Medinipur. On the basis of a complaint made by one Balai Chand Samanta on 8th March, 2012, a criminal case was

initiated against the petitioner by Panskura Police Station, being Case No. 61 of 2012, under sections 363/366 of the Indian Penal Code. The

petitioner was arrested on the very next day and subsequently produced before the learned Judicial Magistrate, Tamluk and kept in judicial

custody. Around a month later, the petitioner was released on bail. Thereafter, the case went on trial and ultimately on 19th September, 2013, the

learned Sessions Judge acquitted the petitioner u/s 235(1) of the Code of Criminal Procedure.

2. It is noticed from the judgment and order of the learned Sessions Judge dated 19th September, 2013 that the prosecution had examined seven

witnesses and relied on certain exhibits. No evidence had been adduced by the defence. The prosecution witness no. 5, being the victim girl, during

cross-examination before the learned Sessions Judge, stated that she had been tutored by the police to make a statement before the learned

Judicial Magistrate. The learned Sessions Judge, after considering all materials and evidence on record, held that recovery of the victim girl with the

accused ""does not ipso facto proves (prove) that the accused had kidnapped the victim girl."" The Court further observed from the evidence on

record it appeared that after recovery, the victim girl made a statement before the Magistrate wherein she stated that she had a love affair with the

accused and out of such love affair she and the accused married each other at a temple. However, in her statement before the learned Sessions

Judge, the victim girl stated that she went to the house of the accused as she was her neighbour. During cross-examination, however, she stated

that at the relevant point of time she went to the house of Tathagata (being the writ petitioner) and subsequently the police came to his house and

she did not go anywhere from the house of Tathagata before arrival of police. Regarding her statement before the learned Magistrate, the victim girl

stated before the learned Sessions Judge, on oath, that she made such a statement before the learned Magistrate on being tutored by the police

and that no marriage was solemnized between her and Tathagata. The learned Sessions Judge, thereafter, proceeded to observe that the statement

made before the learned Magistrate u/s 164 of the Code of Criminal Procedure, during the course of investigation, was a corroborative piece of

evidence and it was not a substantive piece of evidence. The Court further observed that in the instant case there were contradictions in respect of

the statement of the victim girl before the learned Magistrate, made u/s 164 of the Code of Criminal Procedure during the course of investigation

and her statement before the learned Sessions Judge, on oath, at the time of evidence. The learned Sessions Judge, thereafter, went on to observe

that in both the statements one thing was clear, that ""she was not kidnapped by the accused"" (being the writ petitioner). The learned Sessions

Judge further observed that ""the prosecution has failed to prove the allegation of kidnap (kidnapping) of the victim girl from her lawful guardianship

by the accused person."" In such circumstances, the learned Sessions Judge acquitted the accused Tathagata, being the writ petitioner herein.

3. At this juncture, it is necessary to refer to the relevant rules of the West Bengal Primary Education (Conduct of Service of Teachers of Primary

Schools) Rules, 2001, which are set out hereinbelow:

13. Pay and allowances on reinstatement. -- When the suspension of a teacher is held to have been unjustifiable or not wholly justifiable, or when a

teacher who has been dismissed, removed or suspended is reinstated, the disciplinary or appellate authority may grant to him for the period of his

absence from duty --

(a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended, and by an

order to be separately recorded, any other allowance of which he was in receipt of prior to his dismissal, removal, or suspension, or....

4. It is clear from a plain reading of the above provisions of law that if a suspended teacher is subsequently reinstated, the disciplinary or appellate

authority may grant him the full pay to which he would have been entitled to, had he not been so suspended, provided, he was ""honourably

acquitted"" by a competent court of law. Now, the term, ""honourably acquitted"" requires to be defined. There is, however, no statutory definition of

this term in the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001 nor under the Code of Criminal

Procedure or the Indian Penal Code. As such, one has to take recourse to finding out a proper definition of the said term from judicial

pronouncements.

5. The Supreme Court, in the case of The Deputy Inspector General of Police and Another Vs. S. Samuthiram, has held, inter alia, to the effect

that the meaning of the expression ""honourable acquittal"" is unknown to the Criminal Procedure Code or the Penal Code and has been 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 the prosecution had miserably failed to prove the charges levelled against the accused, it can

possibly be said that the accused was ""honourably acquitted

6. The Supreme Court, in the said judgment, relied on several of its own judgments as well the view expressed by Lord Williams, J."" in Major

Robert Stuart Wauchope Vs. Emperor, which is as follows

The expression ""honourably acquitted"" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other

extra-judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that

it ought to have been accepted by the Government authorities and by the Magistrate. Further, we decided that the appellant had not

misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully

and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term ""honourably

acquitted.

7. Applying the principles of law, as laid down by the Supreme Court in the case of Deputy Inspector General of Police (supra) as well as the

observations of Lord Williams, J., as quoted above, there cannot be any manner of doubt, whatsoever that in the facts of the instant case, the writ

petitioner has been ""honourably acquitted"", which is a mandatory requirement under Rule 13(a) of the West Bengal Primary Education (Conduct of

Service of Teachers of Primary Schools) Rules, 2001, for the purpose of being entitled to the full pay, as stated therein. However, such entitlement

follows reinstatement. From the facts, it is noticed that the petitioner has not yet been reinstated in service. As such, the writ petition is disposed of

with the observation that as and when the concerned respondent authority decides to reinstate the petitioner, he shall be entitled to full pay in terms

of Rule 13(a) of the West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001.

The writ petition stands disposed of accordingly.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis.