

(2015) 02 BOM CK 0226

In the Bombay High Court

Case No : Writ Petition No. 4151 of 2013

Ajaykumar Shankarrao Waghmare

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 258
Penal Code, 1860 (IPC) — Section 229A, 279, 304A, 338

Citation : (2015) 2 ABR 677 : (2015) 6 ALLMR 217 : (2015) LabIC 1864

Hon'ble Judges : Abhay Shreeniwas Oka, J; A.S. Gadkari, J

Bench : Division Bench

Advocate : Aparna Wagle i/by Waquar Ahmed, for the Appellant; V.S. Gokhale, AGP and M.S. Karnik, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Abhay Shreeniwas Oka, J.

1. The Petitioner who is a practicing Advocate has challenged the communication dated 21st November, 2011 issued by the First Respondent (State of Maharashtra, Law and Judiciary Department, Mantralaya, Mumbai) by which selection of the Petitioner to the post of Civil Judge, Junior Division and Judicial Magistrate, First Class was cancelled. The Petitioner who is a Law Graduate was enrolled as an Advocate with the Bar Council of Maharashtra and Goa on 18th July, 2009. The Petitioner appeared for the competitive examination held by the Maharashtra Public Service Commission (for short "MPSC") for appointment to the posts of Civil Judge, Junior Division from the Judicial Magistrate, First Class (for short "the Judicial Post"). The Petitioner cleared written examination and was called for viva voce. In the list of recommended candidates published by the MPSC on 31st May, 2011, name of the Petitioner appeared. The Petitioner scored 110 marks in the written examination and 21 marks in viva voce.

2. On 10th February, 2006, a First Information Report was registered against the Petitioner vide C.R. No. 19 of 2006 at Shivaji Nagar Police Station, Nanded,

District - Nanded, for the offences punishable under Sections 279, 338 and 304A of the Indian Penal Code (for short "IPC"). The allegation in the FIR was that on 6th February, 2006 at 8.30 a.m, the Petitioner while plying a motorcycle gave a dash to one Bhagwan Hari Godbole. It is alleged that the Petitioner was driving a motorcycle in a rash and negligent manner, as a result of which, the said Bhagwan sustained injuries on his person. The said Bhagwan died on 9th March, 2006. On 12th October, 2010, an order was passed by the learned Judicial Magistrate, First Class, Nanded, in exercise of powers under Section 258 of the Code of Criminal Procedure, 1973 (for short "CrPC") by which the proceedings against the Petitioner was ordered to be stopped and the Petitioner was ordered to be discharged for the offences punishable under Sections 279, 338 and 304A of the IPC. We must note here that a charge-sheet was filed by the police in the Court of Chief Judicial Magistrate at Nanded on 17th March, 2006.

3. On 4th June, 2011, the Petitioner received a letter from the MPSC recording that the name of the Petitioner has been recommended for the said judicial post. The Petitioner was called upon to forward an enclosed form duly filled in including Column No. 11 regarding arrest, punishment, fine, etc. By letter dated 10th June, 2011 issued by the First Respondent State of Maharashtra, the Petitioner was called upon to remain present for medical check up. On 21st November, 2011, impugned letter was issued by the First Respondent informing the Petitioner that selection of the Petitioner made to the said judicial post by the MPSC has been cancelled on the basis of the recommendation of this Court.

4. Prior to that, according to the case of the Petitioner, he submitted a copy of the order dated 12th October, 2010 passed by the learned Judicial Magistrate, First Class, Nanded as well as a copy of the charge-sheet to the MPSC. On 16th January, 2012, the Petitioner filed Miscellaneous Application No. 31 of 2012 before the Judicial Magistrate, First Class at Nanded for reopening of the criminal case against him. By an order dated 22nd March, 2012, the criminal case was ordered to be reopened. After a complete trial, by a judgment and order dated 12th February, 2013, the learned Judicial Magistrate, First Class, Nanded, acquitted the Petitioner.

5. The first submission of the learned counsel appearing for the Petitioner is that no reasons were recorded by this Court on the administrative side for cancelling the recommendation of the Petitioner. The learned counsel appearing for the Petitioner pointed out that the Petitioner was never served with the notice of filing of charge-sheet and from 2006 till March, 2009, the Petitioner was never served with the summons of the original case. She pointed out that the Petitioner's father had offered his surety at the time of grant of bail and at no stage, a notice was served to his father. The learned counsel appearing for the Petitioner pointed out that though the Roznama shows that the warrant was issued against the Petitioner, it was never served to the Petitioner. She pointed out that there is no police report showing that the service of warrant was attempted to be made on the Petitioner and that the Petitioner evaded service of

warrant. She pointed out that an order of stopping the proceedings was passed on 12th October, 2010 which itself records that the police could not serve warrant and could not procure presence of the Petitioner. She also pointed out the findings recorded in the judgment and order dated 12th February, 2013. She pointed out that in the said judgment, it is held that the medical officer admitted in the cross-examination that the injuries noticed on the person of the deceased could not be caused only due to accident. In the examination-in-chief, the medical officer stated that immediate cause of the death is not the accident. She also pointed out the order dated 22nd March, 2012 by which the case was reopened. She pointed out that the finding of the learned Magistrate is that the proceedings were stopped because of the failure on the part of the police to serve the summons to execute the warrant. She urged that all these aspects were not before this Court when it was recommended that the Petitioner was not fit to be appointed to the judicial post. She urged that the observation that the Petitioner has escaped the trial by evading execution of warrant is completely incorrect.

6. The learned AGP as well as the learned counsel appearing for the Respondents supported the impugned decision. The learned counsel appearing for the Second Respondent has filed on record a set of photocopies of certain documents on the record of SCC No. 581 of 2006. He pointed out that the file containing the summons/warrant issued in the said case has been destroyed and the same are not available. He pointed out that the Petitioner appeared before the learned Magistrate on 17th March, 2006 when a charge-sheet was filed and was granted bail. He pointed out the Roznama of the proceedings of the criminal case. He pointed out that on 17th March, 2006 bail was granted to the Petitioner and next date was fixed as 8th November, 2006. He pointed out that thereafter on several dates, the Petitioner did not appear and, therefore, non-bailable warrant was issued against the Petitioner on 5th October, 2009 which could not be served to the Petitioner. He, therefore, urged that the conduct of the Petitioner of not remaining present after being released on bail was sufficient to come to a conclusion that the Petitioner is not a fit person to hold a judicial post. Submission of the learned counsel appearing for the Petitioner is that no offence involving moral turpitude against the Petitioner was even alleged against the Petitioner. She submitted that the Petitioner on his own applied for reopening of the trial and faced the trial.

7. We have given careful consideration to the submissions. As far as the appointments to the judicial posts are concerned, the same are governed by the Maharashtra Judicial Service Rules, 2008 (for short "the said Rules"). Rule 5 deals with the method of recruitment of judicial officers. The method of recruitment of Civil Judges, Junior Division is by a nomination on the basis of the aggregate marks obtained in the competitive examination conducted by the MPSC in terms of the scheme framed by this Court. Rule 8 of the said Rules reads thus:

"8. Conditions relating to Suitability, Fitness and Character:--

(1) No person selected for nomination shall be appointed,

(i) unless the appointing Authority is satisfied that he is of good character and is in all respects suitable for appointment to the service;

(ii) unless he is certified by the medical authority specified by the High Court that he is medically fit to discharge the duties of the post for which he is selected."

8. It will be necessary to make a reference to the decision of this, Court on the administrative side which recommended that the Petitioner should not be appointed as he is not fit to be appointed to a judicial post. Relevant decision reads thus:

"It is reported on behalf of Superintendent of Nanded, that Shri Waghmare had faced following Criminal Case, the details which are as under:--

The copy of charge-sheet, Roznama and order u/S. 258 of Criminal Procedure Code is annexed herewith at Annexure "B". Shri A.S. Waghmare has also disclosed about the above case in his voluntary declaration.

It is submitted that in Criminal Case No. 581/2006, Shri Waghmare was charged of causing death of a person due to rash and negligent. The offence were bailable one. However, Shri Waghmare never attended the Court for trial after filing the Charge-sheet. Roznama reveals that he was duly served with Court summons, but even then, failed to appear before the Court for trial, as a result of which, non-bailable warrant was issued against him continuously from 2006. It is because of failure of Police to execute non-bailable warrant against Shri Waghmare, that the trial Magistrate, ultimately stopped the proceeding u/S. 258 of Criminal Procedure Code and discharged Shri Waghmare.

It is submitted that the case against Shri Waghmare, involved death of pedestrian and as such was relatively serious. His conduct shows that he evaded to attend trial, which ultimately resulted in stopping of proceedings. Failure to attend the Court for trial on summons by itself is an offence u/S. 229A of I.P.C. Thus, it is not a case of clean acquittal for lack of evidence, but a case of escaping trial by hoodwinking execution of warrant.

Considering the above aspects, he does not appear to be fit to be appointed to the post of CJJD and JMFC."

(Underline added)

9. As stated earlier, the FIR was registered against the Petitioner on 10th February, 2006 with Shivaji Nagar Police Station at Nanded alleging commission of offences punishable under Sections 279, 338 and 304A of the IPC. From the photocopies of, the record of the SCC No. 581 of 2006, it appears that the charge-sheet was filed in the Court of learned Chief Judicial Magistrate on 17th March, 2006. Perusal of the Roznama dated 17th June, 2006 shows that

Exhibit-3 is the Application made by the Petitioner for releasing him on bail. Exhibit-4 is the Vakalatnama of the Advocate for the Petitioner and Exhibits 5 to 7 are the bank documents submitted by the Petitioner. Exhibit-1 in the Roznama is the charge-sheet. Thus, entries in the Roznama dated 17th March, 2006 show that the Petitioner appeared before the learned Judicial Magistrate, First Class, Nanded and was granted on bail. It is thus obvious that the Petitioner was aware of filing of the charge-sheet on 17th March, 2006. On that day, the case was adjourned to 8th November, 2006. There is an entry in the Roznama that on 17th March, 2006, a summons was ordered to be issued to the Petitioner. On 8th November, 2006, the Petitioner was absent and, therefore, the summons was re-issued to the Petitioner making it returnable on 17th June, 2007. On the said returnable date, an order was passed for issuing summons to the Petitioner, returnable on 5th December, 2007. On 5th December, 2007, again a summons was re-issued. On 17th June, 2008, case was adjourned for appearance of the Petitioner till 11th August, 2008. On 11th August, 2008 and 24th October, 2008, the Petitioner was not present and, therefore, summons was ordered to be issued on 24th October, 2008. Next date was fixed as 9th March, 2009. On 9th March, 2009, the Roznama records that summons was served but the Petitioner/accused did not attend the Court. The Roznama records that by a separate order passed, a non-bailable warrant was ordered to be issued against the Petitioner which was made returnable on 19th May, 2009. On 19th May, 2009, 5th October, 2009 and 18th February, 2010, the case was adjourned, but there are no entries made in the Roznama regarding the service of non-bailable warrant.

10. It will be necessary to make a reference to the order dated 12th October, 2010 passed by the learned Judicial Magistrate, First Class, Nanded. The said order records that the police have failed to serve warrant to the Petitioner and have failed to procure his presence. On 16th January, 2012, a Miscellaneous Application was filed by the Petitioner for reopening of the criminal case which was closed. It is pertinent to note here that the said Application was filed on 16th January, 2012. Thus, the Application was filed seven weeks after the impugned communication dated 21st November, 2011 was received by the Petitioner. In the said Application, it was contended that the police have not served any summons, notice, bailable warrant or non-bailable warrant to the Petitioner. It is pertinent to note that in the said Application there is a specific averment that the Petitioner was not aware about the filing of the charge-sheet. The said averment is in Paragraph 3 of the said Application. In Paragraph 4 of the order dated 22nd March, 2012 passed by the learned Chief Judicial Magistrate, Nanded by which the case was restored, a specific contention raised by the Petitioner has been noted that though he was taking education at Nanded and was residing at Nanded, he could not attend the Court because he had no knowledge about the filing of the charge-sheet. It will be necessary to make a reference to what is stated in the rejoinder filed by the Petitioner, which reads thus:

"...I say that through the year 2006 to 2010, the Petitioner resided within the same vicinity and was a student studying law and thereafter preparing for JMFC

examination. Therefore, I say that the Petitioner was at no given time absconding as made out in the impugned order dated 12th October, 2010. I say that within 4 (four) years the case was disposed off by the Learned single Judge without summoning the surety of the Petitioner i.e. the Petitioner's father. I say that proper service of summons was not communicated upon the Petitioner..."

11. In Clause (g) of Paragraph 4 of the rejoinder, the Petitioner has relied upon the Roznama of the proceedings. Thus, the Petitioner was aware of the entries in the Roznama of the proceedings as he himself has annexed a copy of the same as Exhibit-A to the rejoinder. The said copy is a photocopy of the certified copy issued on 7th January, 2012. As narrated earlier, in the Roznama of 17th March, 2006, Exhibit-3 shows that the Application was made by the Petitioner for grant of bail. Exhibit-4 is the Vakalatnama of the Advocate for the Petitioner and Exhibits 5 to 7 are the bank documents submitted by the Petitioner. In the charge-sheet, the Petitioner was the only accused. Exhibit-1 in the Roznama dated 17th March, 2006 is the charge-sheet and Exhibit-2 is the FIR. The fact that the Petitioner appeared on 17th March, 2006 and applied for bail shows that the Petitioner was aware of filing of the charge-sheet. The Petitioner was enlarged on bail. The Petitioner has made a grievance in the Petition that the Criminal Court did not issue notice to the surety. Thus, on 17th March, 2006 on the date of filing of the charge-sheet, the Petitioner appeared before the learned Judicial Magistrate and was granted bail. On that day, the case was adjourned to 8th November, 2006. However, in the Miscellaneous Application No. 31 of 2012 which was filed after service of the impugned order, there is a specific averment made by the Petitioner that he was not aware about the filing of the charge-sheet. As stated earlier, the Petitioner himself relied upon the Roznama which is annexed at Exhibit-A to the rejoinder which records that charge-sheet has been filed on 17th March, 2006 and on the very day the Petitioner appeared before the learned Magistrate. The entry of 9th March, 2009 in the Roznama records that the Petitioner was served with the summons, but remained absent and, therefore, a warrant was issued. The Petitioner has referred to the Roznama in Clause (d) of Paragraph 4 of the rejoinder. However, he has not disputed the correctness of the entries in the Roznama. The first material entry is dated 17th March, 2006 when the Petitioner appeared along with his Advocate and applied for bail. On subsequent dates till 9th March, 2009, he remained absent. The second material entry is of 9th March, 2009 which records that the summons was served to the Petitioner and he did not appear and therefore, non-bailable warrant was issued. The entry dated 9th March, 2009 shows that the Petitioner was served with the summons of the case. The Petitioner was aware of filing of charge-sheet on 17th March, 2006.

12. The Petitioner applied for judicial post on 30th June, 2010. It is in this factual background noted above, the order passed by this Court will have to be considered. In the order, it is stated that the Petitioner evaded to attend the trial which ultimately resulted in stopping the proceedings. The order refers to the Roznama which reveals that the Petitioner was duly served with the Court

summons, but failed to appear before the Criminal Court. Therefore, a warrant was issued. It is true that the warrant was ordered to be issued for the first time on 9th March, 2009 and, therefore, the observation made in the order of this Court that the warrant was issued from 2006 onwards may not be correct. However, in the Roznama, there are entries made on 8th November, 2006, 7th June, 2007, 5th December, 2007, 11th August, 2008 and 24th October, 2008 recording a direction to re-issue summons to the Petitioner. Perhaps, a reference in the High Court order to the issue of warrants from 2006 onwards may be to the issue of summons from the year 2006 onwards.

13. We have made a reference to the averments made in Paragraph 3 of the Miscellaneous Application No. 31 of 2012 in which he has specifically stated that he was not knowing about filing of the charge-sheet. He has merely stated that the police have not served any summons. However, he omitted to point out in the said Application that on 17th March, 2006, he appeared before the Criminal Court and was released on bail. As stated earlier, on the very day, a charge-sheet was filed. Thus, the case made out in Paragraph 3 of the Miscellaneous Application is factually incorrect. The statement made in the Application that he was not aware of filing of the charge-sheet appears to be completely incorrect. The Petitioner was aware of the entries in the Roznama. The entry of 9th March, 2009 records that a summons was duly served to the Petitioner who remained absent and, therefore, a warrant was ordered to be issued. Even in the said Application, the Petitioner has not disputed the correctness of the entry made in the Roznama dated 9th March, 2009. Even the order dated 22nd March, 2012 passed on the said Miscellaneous Application records a statement made by the Petitioner that he was not aware of the filing of the charge-sheet and he was not served with the summons. Though a copy of the Roznama is annexed by the Petitioner himself to his rejoinder, the correctness of the entries in the Roznama of 17th March, 2006 and 9th March, 2009 has not been disputed. We must note here that further Roznama which is placed on record by the second Respondent shows that on 28th June, 2012, the Petitioner applied for cancellation of non-bailable warrant. The said Application was allowed subject to payment of costs. The Roznama dated 11th May, 2012 records that a non-bailable warrant was pending against the Petitioner.

14. In substance, the observation made by this Court holding that the Petitioner is not fit for judicial post is on the ground that the Petitioner remained absent which resulted in stoppage of proceedings in exercise of powers under Section 258 of the Cr.P.C. The Petitioner appeared on 17th March, 2006 when the charge-sheet was filed. However, subsequently, he pleaded ignorance about the filing of the charge-sheet. Though the Petitioner was released on bail on 17th March, 2006, he never attended the Criminal Court till 16th January, 2012 when he filed the Miscellaneous Application for restoration of the case. He went before the Criminal Court on the basis of an incorrect averment that he was not aware of the service of charge-sheet and that he was not served with the summons. The Roznama dated 9th March, 2009 records that though the Petitioner was served

with the summons, he remained absent, and therefore, a warrant was ordered to be issued.

15. The MPSC is entitled only to recommend a candidate for the judicial post. Clause (i) of sub-rule (1) of Rule 8 of the said Rules clearly provides that no person selected for nomination shall be appointed unless the Appointing Authority is satisfied that he is in all respects suitable for appointment to the service.

16. Considering the conduct of the Petitioner of remaining absent before the Criminal Court though he was on bail, this Court recommended to the Government that the Petitioner is not suitable to hold the judicial post. The Petitioner remained repeatedly absent before the Criminal Court after he was released on bail. He went to the extent of denying that he was aware of filing of the charge-sheet on 17th March, 2006.

17. A judicial officer is expected to maintain higher standard of conduct than any other ordinary citizen. A judicial officer occupies an important post which pre-supposes that he should be a law abiding citizen. Therefore, we find nothing wrong with the view taken by this Court that the Petitioner is not fit to hold the judicial post.,

18. The subsequent acquittal of the Petitioner is of no consequence as the conduct which is considered by this Court of the Petitioner is of repeatedly remaining absent before the Criminal Court after he was enlarged on bail. It is true that the offence alleged against the Petitioner did not involve moral turpitude. It is true that at highest, it can be said that the Petitioner was a bad driver. We must, however, note here that the judgment of the Criminal Court acquitting the Petitioner shows that almost all the material witnesses were declared as hostile. Therefore, the ultimate acquittal of the Petitioner will not help him for the purposes of judging his suitability to the judicial post. Moreover, the Petitioner applied for reopening of the case only after service of the impugned communication. The conduct of the Petitioner which is taken into consideration by this Court for judging his suitability and fitness to hold a judicial post was certainly relevant. The conduct shows that the Petitioner did not maintain the standard of conduct which a judicial officer is expected to maintain.

19. Therefore, we find no fault in the decision of the State Government of holding that the Petitioner is not to hold a judicial post. Accordingly, we find no merit in the Petition and the same is rejected.