
(2010) 12 DEL CK 0369
In the Delhi High Court
Case No : Cont. CAS (C) 26 of 2010

Amar Lal Arora

APPELLANT

Vs

Vice Chancellor Delhi University and Another

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 498

Probation of Offenders Act, 1958 — Section 12, 3, 4, 5(1)

Citation : (2010) 12 DEL CK 0369

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : R.P. Jangu, for the Appellant; Anurag Mathur, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—A FIR was lodged against the Petitioner u/s 498A and 406 IPC. Consequent thereto, the Petitioner was convicted by the learned Metropolitan Magistrate vide his order dated 14th August, 2002. Aggrieved by the order passed by Metropolitan Magistrate, the Petitioner herein, filed an appeal against the judgment and conviction order before Additional Sessions Judge. The Additional Sessions Judge released the Petitioner on probation for a period of one year. It was directed that a sum of Rs. 3,00,000/- and a fine of Rs. 5,000/- imposed by the trial Court was to be treated as cost of proceedings and a fine of Rs. 25,000/- was treated as compensation u/s 5(1)(a) of the Probation of Offenders Act. The Petitioner failed a criminal revision before the High Court. The High Court disposed of the revision petition on 13th July, 2009 and the operative portion of the order reads as under:

8. Counsel for the Petitioner submits that he does not wish to press the Criminal Revision petition on merits, however, the order on conviction should not be treated as a disqualification for reinstatement by the University. The Petitioner herein was released by the learned Additional Sessions Judge on probation for a period of one year. Admittedly, Section 12 of the Probation of Offenders Act,

1958 (hereinafter referred to as the, "Act") provides that a person found guilty of an offence and dealt with u/s 3 or 4 of the said Act, shall not suffer any disqualification attached to the conviction. Section 12 of the Probation of Offenders Act, 1958 reads as under:

12. Removal of disqualification attaching to conviction. -- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release u/s 4, is subsequently sentenced for the original offence.

9. In view of the fact that the Petitioner herein was dealt u/s 3 of the said Act, and the unambiguous words of Section 12 of the Probation of Offenders Act, 1958, the Petitioner will not suffer any disqualification on this ground. The University will now consider the representation of the Petitioner in the light of Section 12 of Probation of Offenders Act, 1958.

10 Accordingly, the present revision petition stands disposed of.

2. The Petitioner was employed with the Delhi University as a Personal Assistant. Subsequent to the order of conviction, the Petitioner was dismissed from services.

3. It is further submitted by counsel for the Petitioner that Petitioner has suffered for more than twelve years and he has no source of income to support his old aged mother, who is a widow.

4. Counsel for the Petitioner also submits that while rejecting his representation the Respondents have failed to apply the law in the right prospective and the Petitioner should have been given the benefit of Section 12 of the Probation of Offenders Act, 1958.

5. The grievance of the Petitioner in this contempt petition is that despite the order passed by the Additional Sessions Judge and the order passed by the High Court in criminal revision, the University has not given benefit to the Petitioner of Section 12 of the Probation of Offenders Act, 1958 and the representation of the Petitioner has been rejected by an order dated 29th December, 2009 Counsel for the Petitioner has relied upon Shankar Dass Vs. Union of India (UOI) and Another, more particularly paragraphs 4 and 8 which reads as under:

4. Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Section 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People

Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of Legislatures or from voting at elections to Legislatures. That is the sense in which the word "disqualification" is used in Section 12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned Single Judge of the Delhi High Court.

8. Accordingly, we allow this appeal, set aside the judgment of the Delhi High Court dated October 10, 1972 and direct that the Appellant shall be reinstated in service forthwith, with full back wages from the date of his dismissal until reinstatement. The Government of India will pay to the Appellant the costs of the suit, the first appeal, the second appeal, the letters patent appeal and of this appeal which we quantify at Rupees five thousand. The Appellant will report for duty punctually at his former place of work on April 1, 1985.

6. Counsel for the Petitioner has also relied upon The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, and Iqbal Singh Vs. Inspector-General of Police and Others, . Counsel for the Respondent while relying upon Additional D.I.G. of Police, Hyderabad v. P.R.K. Mohan, (1997) 11 SCC 571 and 763 SCC 190 submits that the Department is not precluded from taking action against the employee in the departmental proceedings. It is further submitted by counsel for the Respondent that in any case the University has taken a view in the matter and passed an order on the representation of the Petitioner dated 29th December, 2009 and thus no contempt has been committed by the Respondent. At this stage, counsel for the Petitioner does not wish to press the present contempt petition and seeks liberty to assail the order dated 29th December, 2009 and also take recourse to such other remedies which may be available to him in accordance with law.

7. The contempt petition is dismissed as not pressed and liberty as prayed is granted.