

(2019) 04 DEL CK 0110

In the Delhi High Court

Case No : Civil Writ Petition No. 3901 Of 2019

Bal Kishan

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 12, 12(a), 12(c), 12(d), 12(e)
Indian Penal Code, 1860 — Section 376
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2019) 04 DEL CK 0110

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Advocate : Ajesh Luthra, Avnish Ahlawat, N.K. Singh, Ankita Ahuja Singh

Final Decision : Dismissed

Judgement

C.M. No.17688/2019

Exemption allowed, subject to all just exceptions.

W.P.(C) 3901/2019

1. The petitioner assails the order dated 03.01.2019 passed by the Central Administrative Tribunal, New Delhi in OA No.1936/2013. The Tribunal has dismissed the said original application by the impugned order. The petitioner had preferred the said original application to assail the disciplinary action taken against him by the respondents on the premise that on the same charge, he had been proceeded in a criminal case wherein he had been acquitted. The acquittal of the petitioner had taken place on account of the complainant not appearing as a prosecution witness to support his complaint, though he had been named as a witness in the charge- sheet. The complainant, however, appeared as a witness in the departmental inquiry held against the petitioner and supported his complaint. The petitioner relied upon Rule 12 of the Delhi Police (Punishment and

Appeal) Rules, 1980 which reads as follows:-

"12. Action following judicial acquittal. - When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:-

(a) the criminal charge has failed on technical grounds,

or

(b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or

(c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available." (emphasis supplied)

2. The submission of learned counsel for the petitioner is that since the complainant had been cited as a witness in the criminal case, as he was named as a witness in the list of witnesses in the charge-sheet, the fact that the complainant was not examined during the trial is neither here nor there, and would not make a difference to the application of Rule 12 since it uses the word 'whether actually led or not'.

3. We do not find any merit in this submission of learned counsel for the petitioner. It is a well settled principle of law that the standard of proof required to establish a criminal charge is far higher than the standard of proof required to establish a charge in a departmental proceeding. In criminal proceedings, the charge has to be proved beyond all reasonable doubts, whereas, in departmental proceedings, the charge has to be proved by evaluating the evidence on the principle of preponderance of probabilities.

4. The purpose of Rule 12 is to bar departmental proceedings where the Police Officer has been charged and tried on a criminal charge arising from the same allegation of misconduct. Thus, for invocation of Rule 12, it would be necessary that the Court dealing with the criminal case has had the occasion to record and deal with all the evidence of the prosecution, as well as the defence of the accused, and its decision reflects upon the reasons for rejection of the charges against the accused. Pertinently, the exceptions carved out in clauses (a) to (e) of Rule 12 show that unless the acquittal of the police officer is clean and on merits, the same cannot be a bar to initiation or continuation of the departmental proceedings on the same charge/alleged misconduct. In our view, to read Rule 12 in a literal manner - as is sought to be contended by learned counsel for the

petitioner, would render it completely absurd and also expose it to challenge on the ground of arbitrariness and illegality. In this regard, we may also take note of the decision of the Division Bench of this Court in *Ajayvir Gulia (Ex. Const.) vs. UOI & Ors.* [201 (2013) DLT 25 (DB)], where a Division Bench of this Court had already examined the purport and scope of Rule 12. The relevant extract from the said decision reads as follows:-

"30. We recap the basic legal issue which arises for consideration in the three captioned appeals. It relates to an interpretation of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980", which we have reproduced in paragraph 12 above. Whereas Ajayvir Gulia urges that notwithstanding Amita, Nisha, Rajvir Singh and Usha Sharma not being examined at the criminal trial when he was charged for having committed an offence punishable under Section 376 IPC, said four persons were cited as witnesses and thus whether the evidence was actually led or not, no departmental action could be taken against him because the criminal charge did not fail on technical grounds, neither the Court nor the Deputy Commissioner of Police has opined that the prosecutrix Ms. "S" had been won over, nor was any additional evidence sought to be proved. Mahesh Kumar, Satender Kumar and Dharmender Kumar also argue on the same line by urging that the view taken by the Full Bench of the Tribunal requires application of Rule 12. The plea of Ravinder Singh is that pertaining to FIR No.152/2000 wherein he was acquitted, Rule 12 would be attracted and as regards FIR No.495/2000 he urges that the trial is still on.

31. Rule 12 of the "Delhi Police (Punishment & Appeal) Rules, 1980" prohibits a departmental inquiry on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless either one or more of clauses (a) to (e) is attracted.

32. The argument of learned counsel for the petitioners was premised on the assumption that evidence proposed to be led at the criminal trial would be "evidence cited" within the meaning of Rule 12 and the expression "whether actually led or not" would make it irrelevant for the purposes of the departmental inquiry that at the criminal trial said evidence was not led.

33. The argument overlooks the fact that the meaning of evidence as propounded by Phipson (Phipson on evidence 17th Edition) is:-

"Evidence, as used in judicial proceedings, has several meanings. the two main senses of the word are: first, the means, apart from argument and inference, whereby the court is informed as to the issues of fact as ascertained by the pleadings; secondly, the subject matter of such means. The word is also used to denote the fact that some fact may be admitted as proof and also in some cases that some fact has relevance to the issues of fact. In a real sense evidence is that which may be placed before the court in order that it may decide the issues of fact.....Evidence, in the first sense means the testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove

some fact in dispute. In the second sense it means the content of that testimony."

34. Wigmore on evidence defines evidence as:-

"Any knowable fact or group of facts, not a legal or logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal, as to the truth of a proposition, not of law or of logic, on which the determination of the tribunal is to be asked."

35. The Indian Evidence Act 1872 defines evidence to mean:

"Evidence" - "Evidence" means and includes -

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) all documents including electronic record produced for the inspection of the Court, such documents are called documentary evidence."

36. Thus, the word evidence, by its very definition means statements/documents which have been produced for the inspection of the Court and on basis whereof a Court decides a lis. Merely because a person is named as a witness and the statement under Section 161 Cr.P.C. recorded during investigation is filed along with the charge sheet and copy supplied to the accused would not mean that the person concerned i.e. the witness becomes evidence cited or the person's statement under Section 161 Cr.P.C. become evidence cited. It is trite that statements recorded under Section 161 Cr.P.C. cannot be used other than to confront a witness.

37. It is apparent that the word "cited" in Rule 12; being a part of the composite words "evidence cited" is accordingly used as a verb and not to describe evidence.

Thus, the next words "whether led or not" have to be read down so as to not render meaningless or absurd the words "evidence cited". To put it pithily, "evidence cited" cannot include what has not been led at the trial i.e. it means oral testimony of witnesses and/or documentary evidence proved.

38. It is no doubt true that every attempt has to be made to interpret a statute, which would include even a Rule, in a manner that no part thereof becomes redundant i.e. Rule against redundancy has to be followed; ordinarily one should not lead oneself to hold that a word or a group of words in a statute are surplus. But situations may arise when, to give effect to the intention of the legislature, the un-skillfulness of the draftsman in introducing certain words in the statute may have to be taken into account and those words have to be ignored to give effect to the intention of the legislature."

5. In view of the aforesaid, we find no merit in the present petition and the same

is accordingly dismissed.