
(2015) 01 JH CK 0102
In the Jharkhand High Court
Case No : L.P.A. No. 233 of 2013

Barmeshwar Nath Singh Yadav

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 411, 461

Citation : (2015) 2 AJR 214

Hon'ble Judges : Pramath Patnaik, J.;Dhirubhai Naranbhai Patel, J.

Bench : Division Bench

Advocate : S.N. Pathak, Senior Advocate, Diwakar Upadhyay and Birju Thakur, for the Appellant

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order delivered by the learned Single Judge in W.P(S) No. 704 of 2003 dated 18th April, 2013 whereby, the petition preferred by this appellant has been dismissed by the learned Single Judge and the punishment of dismissal was upheld. Against this judgment and order the original petitioner has preferred this Letters Patent Appeal.

2. Counsel for the appellant submitted that for the so called alleged misconduct a criminal case was also instituted and in the criminal case there was honorable acquittal passed by the appellate court. This aspect of the matter has not been properly appreciated by the learned Single Judge and wrongly there are few observations in paragraph No. 6 of the impugned order passed by the learned Single Judge. In fact the outcome in the criminal matter was already on record in the writ petition and the order of honorable acquittal was also annexed with the writ petition filed by the original petitioner. It is further submitted by the counsel for the appellant (original petitioner) that once there is honorable acquittal by the criminal court this appellant cannot be punished in the departmental proceedings for the same charge.

3. It is further submitted by the counsel for the appellant that the enquiry report was never supplied to this original petitioner. This aspect of the matter has also not been properly appreciated by the learned Single Judge and hence, the judgment and order delivered by the learned Single Judge deserves to be quashed and set aside.

4. Counsel appearing for the respondent-State submitted that it is true that there is acquittal passed in the criminal matter, but, there is conviction order passed by the trial court. Even if there is acquittal there can be second departmental proceeding and if the charges are proved in the departmental proceeding adequate punishment can also be imposed upon the delinquent. It is further submitted that in the facts of the present case the charges are at Annexure-2, which are of theft. In a criminal proceeding there is acquittal because the witnesses have turned hostile. So far as the disciplinary proceedings are concerned enquiry was conducted, witnesses were examined, charges levelled against the delinquent were proved and he was awarded punishment of dismissal against which appeal was also preferred and the departmental appeal was also dismissed. This aspect of the matter has been properly appreciated by the learned Single Judge. It is also submitted by the counsel for the respondent-State that looking to the nature of misconduct the punishment is not shockingly disproportionate on the contrary, the punishment is in commensurate with the nature of misconduct and hence, this Letters Patent Appeal may not be entertained by this Court.

5. Having heard counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons:--

"(i) The nature of charges are Annexure-2 to this memo of Letters Patent Appeal, which is pertinent to the fact that on 24/25th September, 2000, during night hours, about 15 kilometers away from Patmada Police Station, this appellant (original petitioner) was facilitating the theft of iron worth Rs. 80,000/- from a particular godown. He was caught red-handed by nearby residents of the village and therefore, there was a charge also that because of his act the police image has been reduced in the eyes of the public at large. This appellant (original petitioner) was a Police Constable at the relevant time and he was suspended with effect from 06.10.2000.

(ii) It appears that a criminal case was also instituted bearing Patmada P.S. No. 66 of 2000 dated 25th September, 2000 under Sections 461/379/411 of the Indian Penal Code.

(iii) From the facts of the case, a criminal case was instituted before Judicial Magistrate, 1st Class, Jamshedpur in G.R. Case No. 1542/2000 (Trial No. 150 of 2006). There was a conviction order passed by the trial court in the criminal case and the accused including this appellant was punished for two years simple imprisonment for the offence under Section 379 to be read with Section 411 of

the Indian Penal Code. This appellant was further punished for two years simple imprisonment for the offence under Section 461 of the Indian Penal Code and both the sentences were ordered to run concurrently. This order was passed by the Judicial Magistrate, 1st Class, Jamshedpur dated 12th April, 2006.

(iv) Convicted accused-the present appellant (original petitioner) preferred Criminal Appeal No. 93 of 2006 before the Additional Sessions Judge, F.T.C-IX, East Singhbhum, Jamshedpur and the order of acquittal was passed by the Additional Sessions Judge vide order dated 23rd November, 2006, paragraph Nos. 9 to 17 as under :

"9. P.W.-9 Dinesh Rai is informant, he has stated that occurrence of theft was committed in the night of 24/25.09.2000. On the next day in the morning at about 8.00 a.m. Manjhi Mahli informed him that a theft was committed in the godown which was situated Haludbani P.S. Patmada, District-East Singhbhum. On this information he went at the godown and reached there at about 9.30 a.m. and found that a mob was there. One truck, one Ambassador car were parked there. The No. of the truck was BR 16G.671 and No. of car was BR-16L-9196. He has further stated that MLA Dulal Bhuiyan was also present there. He entered into the godown and found that the Eastern Wall of the godown was broken in an area of 5'ft x 4 1/2 and joist M.S. plate were missing and all the Iron materials were loaded on the truck. The amount of the stolen article was approximately Rs. 80,000/-. He saw from a distance that one Daroga, one constable and two other persons were sitting in the car and the driver and Khalasi of the truck were present in the truck. Dy. S.P. came and arrested 10 persons, Car and a truck from there. He has proved his written report Ext. 2. He fails to identify the arrested persons in the court. In cross-examination he has stated that he had not witnessed the occurrence of theft. The villagers informed about the Darogaji and Sipahi.

10. P.W-7 Gopal Mahali has stated that a theft was committed in the Sworn Rekha Project Godown. He has proved his signature Ext. 1 over the production/seizure list. In para 3 he has stated that he had not produced anything before the police. He has further stated that he was watching his paddy crop near the place of occurrence and on hearing Hullah he went there and found that a loaded truck was there and villagers had surrounded it. He has no knowledge about the person who were loaded the truck. In para 5 he has clearly stated that no seizure was made in his presence. This witness was declared hostile at this stage and he has not supported the prosecution case about the seizure of Ambassador Car and truck. In cross -examination he has stated that police has not recorded his statement. On the saying of Darogaji he put his signature over the paper. The contents of the paper was not explained to him.

11. P.W.-8 Gunadhar Mahali has stated that a theft was committed in the godown of Sworn Rekha Project about 4 years ago in the night. He was watching his paddy crop and on hearing hullah he went there and found that a loaded truck was parked there and villagers had surrounded it. He has not given his statement

before the police. This witness was declared hostile by the prosecution and he was cross-examined at length but nothing material came in his evidence in favour of prosecution.

12. P.W.-1 Bridhan Kshko has stated that he has no knowledge about the occurrence. This witness was declared hostile by the prosecution.

13. P.W.-2 Sunil Manjhi has stated that he has no knowledge about the occurrence. This witness was also declared hostile by the prosecution.

14 PW-3 Shambhu Mahali has stated that on hearing hullah he went near the place of offence. He has no knowledge about the occurrence. This witness was also declared hostile by the prosecution.

15. PW-4 Shivcharan Mahali, P.W.-Fotu Mahali, P.W.-6 Haradhan Pramanik have stated that they have no knowledge about the occurrence. All these witnesses have been declared hostile by the prosecution and they have been cross-examined by the prosecution but nothing material came out in their deposition in favour of the prosecution.

16. P.W.10 Bankey Lal Chaudhary has stated that on 25.09.2000 he was posted as Sub Inspector at Patmada police station and took up the charge of investigation of this case. He has proved formal F.I.R. Ext. 3, registration on the written report Ext. 2/1. He has proved production/seizure list Ext. 1/1. He has further stated that he recorded the statement of the witnesses and they have supported the prosecution case before him. In para 6 he has stated that witness Bridhan Kisko has stated before him that in the night of 24/25 truck, Ambassador car and a scooter came from the side of Dakbangla and some persons loaded the theft articles in the truck from the Godown of Sworn Rekha Project after breaking the wall of the godown and on this Ambassador Car O/C of Patmada Police Station and one constable were present along with Barmeshwar Nath Yadav, Narayan Choubey and Bijay Kumar. He has stated in cross-examination in para 13 that Shyama Kant Yadav has registered a Fardbeyan and he received that fardbeyan on 25.9.2000 in the morning. He visited the place of occurrence at about 4.00 p.m and found that many persons in the leader ship of Dulal Bhuiyan were present there. He took the charge of O/C of Patmada Police station in the evening of 25.9.2000 and thereafter he perused the station diary of the police station and found that the then O/C of the police station Patmada Sri S.K. Yadav and Constable Barmeshwar Nath Singh Yadav had proceeded for village Haludbani after receiving a secret information of theft. He has further stated in para 17 that Dulal Bhuiyan put a garland of shoes in the neck of O/c S.K. Yadav. In para 18 he has clearly stated that due to the pressure of Senior Officers he arrested S.K. Yadav, Barmeshwar Nath Singh Yadav and other persons.

17. On perusal of the oral evidence none of the witnesses have supported the prosecution case. The seizure list witnesses have also not supported the seizure, they simply proved their signature on it. The so called recovered material was

also not produced in the court. There is nothing on record to show that the seized materials were sealed in presence of any person. The villagers have not supported the prosecution. The most important witness was the MLA Dulal Bhaiyan but he was not made witness in this case and he has not been examined in this case. There is no iota of evidence to show the complicity of the accused appellants in the commission of theft and breaking of the wall of the godown. The so called recovery was also not made from the possession of the accused appellants. P.W.-10 is the I.O. He has clearly stated in his deposition that due to the pressure of the superior officers he arrested the accused appellants in this case. This evidence shows that the I.O. of this case had not found any evidence against the accused appellants and due to the pressure he had submitted chargesheet in this case."

(Emphasis Supplied)

In view of the aforesaid order of acquittal passed in Criminal Appeal, it appears that all the witnesses were turned hostile hence, Additional Sessions Judge has passed order of acquittal reversing the judgment of conviction delivered by the Judicial Magistrate, 1st Class, Jamshedpur.

(v) It appears that this appellant (original petitioner) was given a chargesheet after his suspension. Departmental Enquiry Officer was appointed. Departmental enquiry was conducted. Several witnesses were examined and Enquiry Officer has given his report dated 12th June, 2001 and the charges levelled against this appellant (original petitioner) were proved. Disciplinary authority had imposed punishment of dismissal vide order dated 10th August, 2001.

(vi) Departmental appeal was preferred by this appellant against the order of dismissal. Appellate authority has dismissed the departmental appeal preferred by this appellant vide order dated 29th October, 2002.

(vii) Counsel appearing for the appellant (original petitioner) also raised contention about Rule 853-A of the Jharkhand Police Manual that once an order of acquittal is passed after the order passed in a departmental proceeding considering the order of acquittal fresh order is to be passed, but, no such fresh order has been passed by the respondents. This contention is not accepted by this Court mainly for the reason that charges levelled in the departmental proceeding and the charges levelled against this appellant in the criminal proceeding are not the same. There are differences in both the charges. Charges levelled against the departmental proceeding are at Annexure-2 whereas, charges levelled against the criminal proceeding are under various Sections of the Indian Penal Code. There is one more difference why this Rule 853-A of Jharkhand Police Manual is not applicable because there is no honorable acquittal at all. Infact, by the trial court i.e. Judicial Magistrate, 1st Class, Jamshedpur, there was conviction and sentence for two years simple imprisonment to this appellant for the offences punishable under Section 379 to be read with Section 411 of the Indian Penal Code. There was another conviction and sentence for two

years simple imprisonment for the offence under Section 461 of the Indian Penal Code. Both the sentences were ordered to run concurrently and the appellate court, as stated hereinabove, as all the witnesses have turned hostile, acquitted this appellant. In these set of circumstances, Rule 853-A of the Jharkhand Police Manual is not applicable.

(viii) Moreover, the enquiry report was not given, as submitted by the counsel for the appellant, and therefore, this aspect of the matter has also not been properly appreciated by the learned Single Judge. This contention of the Senior Advocate in this Letters Patent Appeal is not accepted by this Court mainly for the reason that no prejudice has been shown by this appellant by non-supply of the enquiry report on the contrary, this delinquent-appellant has already preferred disciplinary appeal against the order of his dismissal and after giving adequate opportunity of being heard the appellate authority has dismissed the departmental appeal vide order dated 29th October, 2002. Thus, there is no procedural error in the departmental proceeding because adequate opportunity of being heard was given and witnesses were also examined. The charges levelled against this appellant were proved and the departmental appeal preferred by this appellant was also dismissed by the appellate authority. Thus, no prejudice has been caused to this appellant. Moreover, it has been held by Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Bishamber Das Dogra, as under:--

"21. Thus, in view of the above, we are of the considered opinion that in case the enquiry report had not been made available to the delinquent employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him." (ix) It has been held by Hon"ble Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., as under:

"30.[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each

case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice".

(Emphasis Supplied)

In view of both the aforesaid decisions, non-supply of enquiry report per se will not vitiate the departmental proceeding as it all depends upon the facts and circumstances of the case and the delinquent employee has to prove that real prejudice has caused to him. In the facts of the present case, it appears that no prejudice has caused to this appellant. In the departmental appeal, preferred by this appellant, he was again heard by the disciplinary authority and the departmental appeal was also dismissed.

(x) Now next question is about adequacy of the punishment or about the quantum of punishment. Looking to the nature of misconduct committed by this appellant, the punishment of dismissal awarded to this appellant is absolutely just, proper and adequate. Neither the punishment can be labelled as unreasonably excessive nor it can be labelled shockingly disproportionate to the misconduct committed by him. On the contrary, looking to the nature of duty with which this appellant was wedded with viz. he being a Constable was to protect public life and property and if he is involved in such type of misconducts, the punishment of dismissal is absolutely just and proper. It has been held by Hon"ble Supreme Court in the case of U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, as under:--

"23. In NEKRTC v. H. Amaresh and U.P. SRTC v. Vinod Kumar this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal."

(Emphasis Supplied)

When there is a misconduct of moral turpitude punishment of dismissal is absolutely just and proper, moreso, when the delinquent is a Police Constable.

(xi) It has been held by Hon"ble Supreme Court in the case of Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, as under:

"21. From the ratio laid down in B. Karunakar it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective.

It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point the order of punishment cannot automatically be set aside.

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is *audi alteram partem* (hear the other side). But it is equally well settled that the concept of "natural justice" is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms." Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula.

(Emphasis Supplied)

(xii) It has been held by Hon'ble Supreme Court in the case of Union of India (UOI) and Others Vs. Alok Kumar, as under:

89. The well-established canons controlling the field of bias in service jurisprudence can reasonably be extended to the element of prejudice as well in such matters. Prejudice *de facto* should not be based on a mere apprehension or even on a reasonable suspicion. It is important that the element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default which relates to statutory violations. It will not be permissible to set aside the departmental enquiries in any of these classes merely on the basis of apprehended prejudice.

92. We are not able to accept the contention addressed on behalf of the respondents that it is not necessary at all to show *de facto* prejudice in the facts of the present cases. We may notice that the respondents relied upon the judgment of this Court in *ECIL* that imposition of punishment by the disciplinary authority without furnishing the material to the respondents was liable to be quashed, as it introduced unfairness and violated the sense of right and liberty of the delinquent in that case. No doubt in some judgments the Court has taken this view but that is primarily on the peculiar facts in those cases where prejudice was caused to the delinquent. Otherwise right from *S.L. Kapoor* case, a three-Judge Bench of this Court and even the most recent judgment as referred to by us in *Kailash Chandra Ahuja* case has taken the view that *de facto* prejudice is one of the essential ingredients to be shown by the delinquent officer before an order of punishment can be set aside, of course, depending upon the facts and circumstances of a given case. *Judicia posteriora sunt in lege fortiora*. In the latter judgment the view of this Court on this principle has been consistent and we see no reason to take any different view. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation to be true. Once this basic feature lacks, the appellant may not be able to persuade the Court to interfere with the departmental enquiry or set aside the orders of punishment.

(Emphasis Supplied)

(xiii) It has been held by Hon''ble Supreme Court in the case of Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, as under:

20. It was also observed in B. Karunakar case that in the event the enquiry officer's report had not been furnished to the employee in the disciplinary proceedings, a copy of the same should be made available to him to enable him to explain as to what prejudice had been caused to him on account of non-supply of the report. It was held that the order of punishment should not be set aside mechanically on the ground that the copy of the enquiry report had not been supplied to the employee.

(Emphasis Supplied)

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the learned Single Judge in dismissing the writ petition. We therefore, upheld the said decision of the learned Single Judge.

7. There is no substance in this Letters Patent Appeal and hence, the same is hereby, dismissed.