
(2008) 01 PAT CK 0025
In the Patna High Court
Case No : LPA No. 442 of 2007

Bhagirath Mahto	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Citation : (2008) 2 PLJR 597

Hon'ble Judges : Rajesh Balia, C.J;V.N. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard counsel for the parties. This appeal is directed against the judgment of learned Single Judge dated 19.3.2007 Reported in Bhagirath Mahto Vs. The State of Bihar and Others, dismissing the writ petition filed by the appellant against his dismissal from service.

2. The facts relevant for the present purposes are that while the appellant-writ petitioner was serving as Constable in Sheohar district, it was alleged that on 17.6.2002 while a superior officer Randhir Prasad Singh, Incharge Sergeant Major had declined to grant him leave while he had granted leave to many others on the same date, the petitioner-appellant had abused and assaulted the said Sergeant Major while he was returning home near a telephone booth. En respect of the said incident, a departmental enquiry was initiated against the petitioner-appellant and he was also for the same charges subjected to the criminal trial. On the basis of evidence led before the court in the criminal trial which included the statement of complainant Sergeant Major, the criminal court came to a positive finding that no incident as alleged had occurred. However, after considering material consisting of the same witnesses in the departmental enquiry, the disciplinary authority came to the conclusion that the charge against the delinquent officer has been proved and penalty of dismissal was awarded vide order dated 3.2.2003.

3. Appeal against the same was rejected by the appellate authority. After the appeal was dismissed, the petitioner-appellant was acquitted with the finding about non-occurrence of the incident. On the basis of the said acquittal order, the petitioner appellant moved a memorial before the competent authority which has been rejected.

4. This led to filing of the writ petition out of which this appeal arises.

5. The learned Single Judge has dismissed the writ petition holding that since Sergeant Major had been cross-examined in the departmental enquiry and on that premises, the enquiry officer has concluded about the charge having been proved, there is no infirmity in the finding reached by the departmental enquiry contrary to the finding of the criminal court. Apart from that, other technical objections which were urged, did not find favour with the learned Single Judge.

6. The principal question that arises for consideration before us, is that in a case where a delinquent officer is subjected to departmental enquiry as well as criminal charge in respect of the same transaction, the witnesses produced to prove that transaction in departmental enquiry as well as the criminal court are the same, whether the findings in departmental enquiry can be at variance with the findings of the criminal court and the acquittal in the criminal case will affect the ultimate outcome of the departmental enquiry?

7. Having given our careful consideration, we are of the opinion that so far general principle that departmental enquiry and the criminal proceedings are two different proceedings which can go simultaneously and concurrently and different conclusion can be reached in the two proceedings because degree of proof required in both the cases being different, is concerned, the same is well settled. However, a distinction has to be drawn where in the criminal proceedings a positive finding is recorded about non-occurrence of the incident and not merely because of not proving the allegations levelled against the accused. Where there is a finding of the non-occurrence of the incident, this principle cannot be extended and in a departmental enquiry findings cannot be permitted to outweigh the judicial finding of the non-occurrence of the incident.

8. This distinction can be discerned clearly in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, wherein the apex court laid bare the principle. In this case, the delinquent officer had been subjected to departmental enquiry and punished on the allegation of recovery of gold balls in a raid having taken place at his residence and discovery of incriminating articles during the search.

9. While in the departmental enquiry the petitioner was found guilty and punished, in the criminal proceeding, the court after considering the same evidence had reached a definite conclusion that on a consideration of entire evidence, it appeared that no search was conducted nor any recovery was made.

10. It is in these circumstances, while reiterating the general principle that a

departmental proceeding and proceeding in a criminal case can proceed simultaneously as there is no bar in conducting the same simultaneously though separately, the Supreme Court further held-

"As pointed out earlier, the criminal case as also the departmental proceeding were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

11. The said principle was followed and applied later on by the Supreme Court in the case of G.M. Tank vs. State of Gujarat & Ors. reported in (2006) 6 SCC 446.

12. As we have noticed above, in the present case having perused the order of acquittal, we find that there is positive finding that no occurrence like alleged incident took place by the criminal court, in which the person who is alleged to have been assaulted, was himself a witness, by discarding his evidence.

13. The case of the petitioner appellant is fully governed by the ratio laid down in the case of M. Paul Anthony (supra) and consequence must follow that the petitioner-appellant cannot be held guilty of the misconduct alleged against him in view of the findings of the criminal court.

14. In the circumstances, this appeal is allowed. Order impugned, the order of punishment including that of the appellate authority and the authority deciding memorial are quashed.

15. The petitioner-appellant shall be entitled to all consequential benefits. No costs.