

(1971) 08 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 2076 of 1967

Bhaurao Dagdag Thakur

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-08-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 20(2), 310, 311, 311(2)
Criminal Procedure Code, 1898 (CrPC) — Section 403
Essential Supplies (Temporary Powers) Amendment Act, 1950 — Section 7
General Clauses Act, 1897 — Section 26
Medical Act, 1858 — Section 29
Motor Vehicles Act, 1988 — Section 60
Penal Code, 1860 (IPC) — Section 161, 186

Citation : (1973) 1 LLJ 153

Hon'ble Judges : D.B. Deshpande, J;B.N. Deshmukh, J

Bench : Division Bench

Judgement

Deshpande, J.—This second appeal referred to this Division Bench raises a short question about the effect of the order of acquittal recorded in favour of a public servant on the departmental proceedings instituted against him on the basis of the same facts. The appellant was recruited to the armed constabulary of the then State of Bombay on or about June 20, 1940. On August 1, 1941 he was transferred to the unarmed police force and in due course came to be posted at Nawapur Police Station on or about May 1, 1957 as constable. In the year 1958 he was assigned the duty of detecting gambling cases. It appears that two or three cases detected by him ultimately resulted in conviction and in one such case one Magan Bhika was tried and convicted on March 27, 1958.

2. However, on April 14, 1958 on the complaint of one Limji, P.S.I. Anti-corruption Police laid a trap and the accused was caught red-handed, while accepting bribe of Rs. 5 from the said Limji. After investigation he was tried before the Special Judge at Dhulia in Special Case No. 4 of 1958 for offence under S. 161, Indian Penal Code and Acquitted on November 8, 1958. No appeal

was preferred by the State against this order of acquittal. However, departmental proceedings were instituted against him by framing a charge on February 11, 1959 calling upon him to show cause why he should not be dismissed on account of his having accepted bribe of Rs. 5 on April 14, 1958 from the said Limji. S.D.P.O., Nandurbar, held the inquiry as inquiry officer against the appellant and on his report dated April 26, 1959 the District Superintendent of Police, Dhulia, passed an order of dismissal, after giving second opportunity to him to show cause against the proposed action. His appeal to the Deputy Inspector General of Police was dismissed on August 8, 1959 and his revision to the State also was rejected by the State Government on May 21, 1960. He, therefore, instituted the present suit on October 16, 1961, for a declaration that the order of dismissal passed against him was void and unenforceable and for a further declaration that he continued to be in service. He also asked for a decree for arrears of his salary. The Civil Judge, Senior Division, Dhulia, decreed his suit on March 26, 1962. However, on appeal by the State, the Extra Assistant Judge, Dhulia, allowed the same and the decree passed in his favour was set aside on October 4, 1963. The legality and validity of this judgment and decree is challenged in this second appeal.

3. Mr. Khare, the learned advocate for the appellant, contends that the order of dismissal is not based on any evidence. This contention is untenable. Complainant Limji and two panchas Hirji and Waman appear to have been examined by the inquiry officer, as also the P.S.I. Ranade. The D.S.P. relied on their evidence. It is true, that his observation that acquittal was based on technical ground is incorrect. The judgment of the Special Judge shows that he refused to rely on any of these witnesses. He has discussed a number of infirmities. The D.S.P.'s order does not even advert to them. Much could have been said against such a mechanical recording of finding. But the order of the Deputy Inspector General of Police in appeal makes up all these defects. His order shows that infirmities referred to by the Special Judge were present to his mind. He considered the evidence of panache's with caution. He chose to rely on the evidence of P.S.I. Ranade along with certain circumstances. After the merger of the order of the D.S.P. in the appellate order of the Deputy Inspector General of Police, defects therein do not require any consideration. Adequacy or quality of such evidence is not open to question in suit proceedings challenging such orders of dismissal. Thus the order of dismissal cannot, therefore, be struck down as being based on no evidence.

4. Mr. Khare then contends that the finding of the Special Judge negating the story of the appellant having taken bribe is binding on the dismissing authority and it was not open to him to record a contrary finding and accept the evidence of those whose evidence was discarded by the Special Judge. This contention, to our mind, also is equally misconceived. The rules in this behalf themselves speak to the contrary. Rule 445 of Chapter XIII of the Bombay Police Manual, Volume I, on page 392 itself requires such authority to consider whether such acquitted public servant should be retained in service. It is not suggested that this rule is

invalid or is violative of any constitutional or legal provision. Under this rule, the competent dismissing authority is entitled to hold inquiry and consider the evidence taken afresh for deciding as to whether such servant should be retained in service or not. The order of acquittal or the finding recorded by the criminal Court in such cases cannot be conclusive of the allegations made against such person. The acquittal order may be based on any technical point, such as the defect in the charge or any defect in the procedure. The acquittal may sometimes result as a result of some doubt in the mind of the Court, which may not feel it safe to convict the person and send him to jail and may feel it safe to give the benefit of doubt to such an accused. The order of acquittal may also be the result of the witnesses at the trial turning hostile and deposing in the Court contrary to what they had stated before the investigating agency at the earliest available opportunity, when the facts were fresh in their minds and when any thought of twisting them or manoeuvring them could not have even arisen. The prosecutor sometimes chooses to produce only some pieces of evidence and the opinion recorded by the trial Court in such cases cannot be conclusive of other pieces of evidence, not produced before such Court.

5. This apart, it is necessary to bear in mind that the objective with which the criminal trial is held is distinctly different from the object with which the departmental inquiries are held. In the one the question at issue is solely whether the accused has committed any offence against the public as a whole, while in the other the short question involved is as to whether the public servant concerned deserves to be retained in service which essentially is a matter of public interest. Such inquiry is instituted to comply with the guarantee afforded to the public servants under Art. 311 of the Constitution; but the scope of the inquiry and the object with which the same is undertaken are distinctly different. Strict rules of Evidence Act are not applicable to proceedings in the departmental inquiries. Any piece of evidence, which could have been discarded by the criminal Court on the ground of inadmissibility, can still be taken into account by the dismissing authority. Even in cases where the evidence led before the criminal Court and dismissing authority happens to be the same, the standard of proof required in criminal Court undoubtedly is different from the one required before the dismissing authority. The question of prosecution being required to prove its case beyond possibility of any doubt cannot conceivably arise when the dismissing authority holds inquiry with a view to find out whether such a public servant deserves to be retained in service. It is thus clear that the findings recorded by the criminal Court need not be binding on the dismissing authority while holding the departmental inquiry against him, as required under the rules in this behalf.

6. Mr. Khare, however, relied on the judgment reported in *Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another*, , and *Channappa v. Mysore R. A. Tribunal*, AIR 1966 Mys. 68. The Mysore High Court followed the ratio of the Madras High Court as the point involved in both the cases was the same. He also relied on *Qamarali Wahid Ali Vs. State of Madhya Pradesh*, , P. E.

Ponnurangam v. Mysore Govt. R. T. Dept. AIR 1962 Mys. 84, and Krishnamurthy v. Chief Engineer, Southern Railway ILR 1965(2) Mad. 373. In all these cases public servants were dismissed after departmental proceedings, though on the same charges they were acquitted earlier by the criminal Court. All these judgments, no doubt, lay down that the findings recorded by the criminal Courts in the course of the criminal trial are binding on the quasi-judicial tribunals holding departmental proceedings. It will be enough if detailed reference is made to the J. D'Silva's case decided by the Madras High Court. A lorry owner was tried for offences under S. 186, Indian Penal Code and S. 7 of the Essential Supplies Act of 1950 by the Magistrate for smuggling rice, and was acquitted. The Regional Transport Authority then proceeded to cancel his licence for breach of the conditions of the licence on the same allegations as provided under S. 60 of the Motor Vehicles Act. These proceedings were challenged in the High Court by a writ application and came up firstly before Subba Rao, J. The matter was referred then to the Division Bench and thus the writ petition came to be heard by Rajamannar, C.J. and Venkatarama Aiyar, J. While allowing the application, the learned Judges made the following observations on which stress was laid by Mr. Khare :

"... It would indeed be a strange predicament when in respect of the same offence, he should be punished by one tribunal on the footing that he was guilty of the offence and that he should be honourably acquitted by another tribunal of the very same offence. As primarily the criminal Courts of the land are entrusted with the enquiry into offences, it is desirable that the findings and orders of the criminal Courts should be treated as conclusive in proceedings before quasi-judicial Tribunals like the transport authorities under the Motor Vehicles Act."

We regret, we do not find it possible to subscribe to the view enunciated in the above passage. We say so with great respect to the learned Judges. To us the law so enunciated appears to have been stated in too wide terms. The underlying principle that a person should not be vexed twice with the same issue is not by itself exceptionable. This principle is codified in S. 11, Civil Procedure Code, S. 403 Criminal Procedure Code, S. 26 of the General Clauses Act and also has been incorporated in Art. 20(2) of the Constitution, in some measure or the other. Then there is the fundamental principle of res judicata apart from the one incorporated in S. 11 of the CPC and also the principle of "issue estoppel" applicable to the criminal cases. These principles operate in limited fields under limited circumstances specified therein. The learned Judges have not referred to any one of them in the above passage, as on the face of it none of these are applicable to the contingency arising in the said case. They have also not referred to any other section of the Motor Vehicles Act or the rules thereunder to warrant such broad proposition. It is true that respect for the judgments of the municipal Courts - civil or criminal - is part of the rule of law enshrined in our Constitution. Presumably this seems to have weighed on the minds of the learned Judges, while making these observations; but nowadays municipal Courts also have ceased to be the sole arbiters of disputes of every kind.

Exigencies of modern life have necessitated the constitution of several administrative and domestic tribunals to operate in various fields. This in no way militates against the rule of law. Such tribunals are possessed of exclusive jurisdiction in regard to the cases adjudication of which is entrusted to them. The extent of the finality available to the judgments and orders of the municipal Court in proceedings before such tribunals of limited jurisdiction must necessarily depend upon the provisions of the Act and the rules of which such tribunals are the creatures. It cannot, therefore, be laid down as an inflexible rule of law that judgments and findings recorded by the municipal Courts - civil or criminal - should be conclusive in all cases, if the controversies covered by them are raised before such tribunals.

7. It is unnecessary to examine the scheme under the Motor Vehicles Act and the rules thereunder for the purposes of this case. Limits and jurisdiction of the dismissing authority in the present case, i.e., the domestic tribunal, with which we are concerned are specified in the rules governing the departmental inquiries. These rules shall have to be read along with Art. 311 of the Constitution, which represent the measure of protection made available to the public servants in the event of their removal, dismissal or reduction in rank, as against "the pleasure of the Crown" during which they are expected to hold their posts. We have already referred to Rule 445(1) and noted that the said rule requires the concerned authority to decide the advisability of retaining so acquitted police officer in service. He is to decide it on material before him in spite of his acquittal by the criminal Court. In other words, he has to arrive at such decision unfettered by the findings of the criminal Court and uninfluenced by what the said Court has said in its acquittal judgment. This provision is singularly in contrast with sub-rule (2) and proviso (a) to Art. 311(2) of the Constitution. Sub-rule (2) of Rule 445 and proviso (a) to Art. 311(2) in terms dispense with any further inquiry and authorise such authority to dismiss the Government servant who has been convicted at the criminal trial. Thus the rules have made a distinction between the acquittal and conviction of a public servant for the purposes of attaching finality to the findings of the criminal Court. In the one case the rules and the Article contemplate giving effect to the verdict of the criminal Courts, while in the other such authority is required to form its own opinion on the material at its disposal after giving notice to such acquitted police officer in spite of his acquittal by the criminal Court. This apparently discriminatory approach in the two contingencies has to be understood against the constitutional scheme enshrined in Arts. 310 and 311 of the Constitution. Article 310 imports the doctrine of the English law of the services being during "the pleasure of the Crown", while Art. 311 represents protection made available to such Government servants in the event of their removal from the services being by way of punitive measure. It is unnecessary to refer to the history of the development of the law in this behalf, as the same has already been adverted to by the Supreme Court in *S.A. Venkataraman Vs. The Union of India (UOI)* and *Another*, of the judgment). The distinction and the difference in approach in the contemplated follow up of action

after the acquittal or the conviction appears to have been based on sound public policy. In the event of conviction of a public servant or police officer, there is hardly anything further to be inquired into, as such conviction itself is the proof of his misconduct. Provision for the inquiry in spite of acquittal appears to have been made to ensure that the Government is not compelled to retain the services of any corrupt or undeserving officers merely because the State could not discharge the onerous burden of proof or could not prove the misconduct by the admissible available evidence at the criminal trial. It is thus clear that the law of which the domestic tribunal is the product, itself contemplates implementing the verdict of the criminal Court in one case, while refusing to give effect to it in the other case.

8. It is worthy of note in this context that findings of any criminal Court ordinarily do not operate as *res judicata* in any civil proceedings : see *Adi Pherozshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, . In fact judgments in criminal Court are not even admissible for the proof of such findings where such civil proceedings are governed by the Evidence Act. These can be admitted in evidence and relied on as conclusive of any issue in other proceedings only if the rules governing the procedure of such tribunal so permit.

9. It will be useful to refer in this context to the judgment of the House of Lords in *General Medical Council v. Spackman* [1943] 2 All E.R. 377. A medical practitioner in this case was found by the Divorce Court to have committed adultery with a woman, who stood in professional relationship with him. Section 29 of the Medical Act of 1958 authorised the Medical Council to erase the name of the practitioner from its register on proof of his infamous conduct. The said section, however, made a distinction in a case where the medical practitioner was convicted and a case where his infamous conduct was not the subject of criminal trial. In the latter case, the Council was required to arrive at any decision adverse to the practitioner, after "due inquiry". At the hearing, the Council sought to rely on the finding of the Divorce Court and declined to hear any other evidence and directed to erase the name of the practitioner from its register. When challenged in writ proceedings before the High Court, the majority decision by 2 : 1 upheld the contention of the Council and overrule the contention of the practitioner that the Council was bound to hear other evidence. The Appeal Court, however, accepted the plea of the practitioner and on appeal to the House of Lords, the view of the Appeal Court was confirmed. It was thus held that reliance by the Council on the finding of the Divorce Court alone was misconceived and refusal to hear other evidence by the Council was unwarranted. The following passage from the speech of Lord Wright is worthy of note :

"..... The Legislature has not made a decree of the Divorce Court conclusive on the question of adulterous conduct, in the same way as it has made a conviction of felony or misdemeanour conclusive so that in such a case all that the Council has to decide on proof of the decree and the identity of the party of the decree

and the adultery amounts to infamous conduct in a professional respect. Parliament, when it thinks fit, can clearly and effectively put a decree of adultery of the Divorce Court on the same footing for the purpose of disqualifying the offender as a conviction of treason and felony the proceedings in the Divorce Court were entirely separate proceedings : the proceeding before the Council are fresh proceedings, before a different body, who are bound to hold a due inquiry on their own responsibility and make their own decision on the evidence before them."

In our opinion, the principle enunciated in the above extract is also equally applicable to the present controversy. It is true that the House of lords was dealing with the powers of a domestic tribunal created by the statute, while we are dealing with a tribunal created by the rules. It is also true that in the case before the House of Lords a citizen was trying to get rid of the adverse finding of the civil Court by leading evidence afresh, while in the case before us the State is trying to get rid of the verdict of the criminal Court, which is favourable in some measure to a citizen. This, however, does not make any difference whatsoever to the principle at issue in this case, viz., the competence of the domestic tribunal to ignore the verdict of the municipal Court, if so authorised by the rules governing its procedure. The weighty observations of the noble Lord fortify the view that we are taking in this case.

10. What seems to have weighed heavily on the minds of the learned Judges is "the strange predicament" of there being conflicting findings in the event of two different tribunals being called upon to decide on the same set of facts. But, in our opinion, such contingency is implicit where two different tribunals or forums are called upon to decide questions arising out of the same set of facts for altogether different purposes and under different procedures and rules and standard of evidence. The following passage from the judgment of the Supreme Court in *M.S. Sheriff Vs. The State of Madras and Others*, , can be usefully quoted, though the observations are made in a different context :

"..... no hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Court is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment."

Expressions "punished", "offence" and "acquitted", in the passage from the Madras judgment, even in regard to the proceedings before the Road Transport Authorities appear to us to be out of tune with the wording of S. 60 of the Motor Vehicles Act. At any rate, as settled in *Venkataraman's case* (supra) the delinquent officer is not tried for any "offence" by the domestic tribunal nor is he "punished" or "acquitted" by such tribunal in departmental proceedings.

11. We are, therefore, of the opinion that the domestic tribunal, such as the

dismissing authority in departmental proceedings, does not violate any rule of law or any other principle of law, when it chooses to ignore the findings of the criminal Court and decides to act on the evidence led before him, and ultimately comes to the conclusion that such police officer is not fit to be retained in service in spite of his acquittal by the criminal Court. He also does not violate any principle of natural justice merely by ignoring such findings of the criminal Court, where otherwise he has recorded his findings after giving full opportunity to the delinquent to have his say.

12. We find some support to our view in the judgment of the Gujarat High Court, reported in *Motising Chhagasing Vaghela Vs. S.D. Mehta*, , to which our attention was drawn by the learned Assistant Government Pleader, Mr. Pratap. The said judgment exhaustively deals with the contrary observations of Tare, J. in *Qamarali's case* (supra). We find ourselves generally in agreement with these observations of the learned Judges.

13. Reliance by Mr. Khare on the following passage in the judgment of the Supreme Court reported in *Pritam Singh and Another Vs. The State of Punjab*, , quoting from [1950] A.C. 458 is thoroughly misplaced :

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim *res judicata prevaricate acceptor* is no less applicable to criminal than to civil proceedings".

In spite of the width of the language employed, we have no doubt that the Supreme Court could not have intended to make such acquittal effective even in departmental proceedings, when the rules and the provisions of the Constitution themselves loudly speak to the contrary, nor could have they intended to cut down the ambit of Art. 310 or extend the scope of the protection made available to the public servants under Art. 310 or extend the scope of the protection made available to the public servants under Art. 311 of the Constitution. The observations cannot mean anything less and anything more than that such person cannot be tried again in any criminal Court on the strength of the same facts.

14. It is true as urged by Mr. Khare that the witnesses and the evidence relied on by the dismissing authority are virtually the same which have been condemned by the Special Judge in the criminal proceedings. It is unfortunate that the infirmities relied on by the Special Judge did not impress the dismissing authority a bit. That, however, does not make any difference to the principle involved in this case. The dismissal order cannot be said to have been beyond the jurisdiction of the said authority and the order is not shown to be arbitrary, capricious or mala fide. It could have been said to be so, had the dismissal

orders passed by the domestic tribunal not directly or indirectly shown that the infirmities adverted to by the criminal Court were not present to the mind of the dismissing authority. It cannot be ignored that the question involved in these proceedings essentially is the advisability of retaining the appellant in service, and the wisdom of entrusting such questions to the decision of the departmental authorities cannot be open to any objection.

15. Result is that the appeal fails. As the appeal was allowed to be filed in forma pauperis, the appellant is directed to pay court-fess. In the circumstances of the case, however, there will be no order as to other costs.