

(1976) 02 MAD CK 0059
In the Madras High Court

Doraikannu

APPELLANT

Vs

The General Manager, Parrys Confectionery, Ltd. and Another

RESPONDENT

Date of Decision : 09-02-1976

Acts Referred:

Citation : (1977) 1 MLJ 521

Hon'ble Judges : K. Veeraswami, C.J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The second respondent in the writ petition is the appellant. The first respondent the General Manager, Parrys Confectionery Ltd., Nellikuppam, successfully sought under Article 226 of the Constitution to have the order of the Industrial Tribunal, Madras, which declined approval under" proviso to Section 33 (2) of the Industrial Disputes Act, 1947, to the dismissal of the appellant from service quashed. There was a theft in the go-down near the confectionery in E.I.D. Parry and Co., Nellikuppam at about 11-45 p.m. on 22nd November, 1968 of copper vessels and gun-metal articles. Six persons were prosecuted, three of them for committing the theft and three for abetting in the commission of the offence. The prosecution ended in an acquittal by the Sub Magistrate of Panrutti. The Magistrate said thus:

In the result I find this is a case in which the benefit of doubt could be given to the accused. I acquit them u/s 251 (A) (ii), Civil Procedure Code.

The management, which is the first respondent, thereafter took departmental action against the second respondent, in the writ petition. The usual procedure was gone through, of framing a charge, asking for explanation, submission of the same and making a report. Similar enquiry was conducted against four others as well. The enquiry officer found four of them guilty of the charge of theft. Doraikannu was one of them. Ramalihgam who had been charged in the criminal prosecution with abetment but acquitted by giving him benefit of doubt, was also found guilty of abetment of theft at the departmental enquiry. The first respondent, accepting the finding of the enquiry officer, dismissed the second

respondent from service. But because there was an industrial dispute pending with the tribunal, approval u/s 33 (2) for the dismissal was sought, but that was not given by the tribunal. Ismail, J., set aside that order and in effect pointed out that the Tribunal should consider the matter afresh. The appeal arises from the order of Ismail, J.

2. The Tribunal's order declining approval was rested on three grounds--(1) the departmental action against the appellant was not bona fide; (2) Ramalingam being a co-accused with the, appellant both in the criminal prosecution and before the enquiry officer, he should not have been examined as a witness and his evidence acted upon; and (3) there was no evidence before the enquiry officer to find the appellant guilty of the charge framed against him. The ground of want of bona fides was rested on three, premises.

(a) the appellant has been acquitted in the criminal prosecution;

(b) the first respondent had waited for the conclusion of the prosecution proceedings;

(c) the statement given by Ramalingam before the enquiry/officer had been acted upon by him, and he was not dismissed from service, but was given a lesser punishment.

3. Ismail, J., went into each of these grounds and three limbs in the first ground, and came to the conclusion that the Tribunal's order could not be supported.

4. We are of the same opinion. The departmental enquiry cannot be considered to be wanting in bona fides only because of the reasons given by the Tribunal. Where on an identical charge and evidence in a criminal prosecution as an employee he has been found not guilty on merits, and therefore, he has been acquitted, no departmental enquiry can be undertaken on the identical charge and a finding of guilty given on like or identical evidence, ignoring the finding of a competent criminal Court for acquittal on merits. *Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another*, , pointed out that a quasi-judicial tribunal like the Regional Transport Authority or the Appellate Tribunal cannot ignore the findings and orders of competent criminal Courts in respect of an offence when the Tribunal proceeds to take any action on the basis of the commission of that offence. *Rajamannar, C.J. and Venkatarama Aiyar, J.* , further observed that 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 transport authorities under the Motor Vehicles Act. That was a case of a discharge of the accused on a full enquiry and on a finding that the accusation was groundless. It was, therefore; an order of the Magistrate on merits of the accusation. But, if an acquittal in a criminal prosecution is on a technical ground or by giving benefit of doubt, the position would be different, and in such a case the departmental enquiry on a similar charge and evidence would be open. If such enquiry is made, no want of bona fides Could be

attributed to the enquiry. In *S. Krishnamurthy Vs. Chief Engineer, Southern Railway, P.T. Madras and Another*, since the acquittal there was on a technical ground relating to criminal procedural law, but there was a specific finding that a bribe was given to, and taken by the appellant there, it was held that he could not claim any exemption from subsequent disciplinary proceedings. Such proceeding would be in consonance with the finding of the criminal Court. The *Tirunelveli Tuticorin Electric Supply Co. Ltd. Vs. The Industrial Tribunal and Another*, decided by Ismail, J. is to the same effect that if the acquittal is on merits, departmental proceedings on identical charge will not be open. But, in the instant case reported in *General Manager, Parrys Confectionery Ltd. v. Industrial Tribunal (1974) 1 L.L.J. 422* the same learned Judge has expressed the view that if the acquittal is made as a result of giving of the benefit of doubt and it is not founded on, merits, there is no bar to a departmental enquiry of the same charge. We concur with this view. It follows, therefore, that the Tribunal was not right in his view that the departmental enquiry in this case was not bona fide because the appellant has been acquitted by giving him the benefit of doubt or the departmental enquiry had awaited the result of the prosecution, or that he was given a lesser sentence. He was given a lesser sentence because he was only charged with the offence of abetment, while the appellant was charged with the offence of theft.

5. The second ground of the tribunal which we mentioned was also not accepted by Ismail, J. Here again, we are in agreement with Ismail, J. The domestic tribunal, is not a court, and the rules of evidence are not applicable to the proceedings before it. The Tribunal was not, therefore, right in discountenancing the evidence of Ramalingam, because he figured as a co-accused along with the appellant both before the Magistrate and before the enquiry officer. There is also nothing to suggest that Ramalingam was won over or influenced to give evidence against the appellant.

6. As to the last ground of charge, Ismail, J. has rightly pointed out that the statement given by Ramalingam was admitted by the appellant. It cannot, therefore, be said that the finding of the enquiry officer was not supported by any evidence.

7. The scope of the Tribunal's enquiry in a petition for approval under the proviso to Section 33 (2) is very limited. In *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, the Supreme Court defined it,

...the tribunal does not sit as a court of appeal weighing or reappreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence on the domestic enquiry as it is in order to find out whether there is a prima facie case or if the findings perverse.

There is no doubt, as pointed out by Ismail, J. in this case, that the tribunal's order went beyond the purview of its jurisdiction in acting u/s 33 (2) of the Industrial Disputes Act.

8. The appeal is, therefore dismissed. No costs.