
(2009) 02 JH CK 0065
In the Jharkhand High Court

Ganesh Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 511

Citation : (2009) 2 JCR 295

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—While the petitioner was working as a clerk in Jharkhand Armed Police-4, at Bokaro, a First Information Report was lodged by the informant putting allegation that this petitioner made an attempt to commit rape on his daughter and on the said allegation, First Information Report was instituted under Sections 376/511 of the Indian Penal Code. On getting such information, preliminary enquiry was made by the authority of the Jharkhand Armed Police. On enquiry allegation being found prima facie true, department proceeding was initiated against the petitioner. Thereupon, the petitioner filed a writ petition, bearing W.P. (S) No. 6093 of 2002 challenging the continuation of the proceeding on the ground that such proceeding has been initiated on the same allegation, upon which First Information Report was lodged but this Court did not interfere in the matter. However, it was observed that in case of acquittal, petitioner may take advantage in appeal. Thereafter the petitioner on being found guilty was dismissed from the service. Thereafter an appeal was preferred that also got dismissed and then memorial preferred by the petitioner was also rejected. However, the petitioner was acquitted in criminal case and then filed a representation before the Deputy Inspector General, Jharkhand Armed Police, Ranchi, respondent No. 2 on 28.3.2007 with a prayer to reinstate the petitioner in the event of his acquittal in criminal case. But no order was passed and therefore, the petitioner was left with no option but to file this writ petition for a direction to the respondent to reinstate the petitioner in service.

2. Learned Counsel appearing for the petitioner submits that since the petitioner has been acquitted from the criminal charge on which charge, the petitioner on being found guilty in a departmental proceeding was terminated, the petitioner deserves to be reinstated in the service, in view of the decision rendered in a case of G.M. Tank Vs. State of Gujarat and Another, .

3. However, learned Counsel appearing for the respondent-State submits that the ratio laid down in the aforesaid case is not applicable in this case as the petitioner has not been acquitted honorably or in other words, there has been no order of clean acquittal, rather benefit of doubt has been given. Therefore, the ratio laid down in the aforesaid case that the order of dismissal is not sustainable if the delinquent is acquitted on the same charge in criminal trial honorably is not applicable in this case.

4. I do find substance in the submission made on behalf of respondent-State.

5. From perusal of the order passed in a criminal case as annexed under Annexure 3, the petitioner seems to have been given benefit of doubt while recording the order of acquittal and in that eventuality, the order of termination passed in a departmental proceeding cannot be held to be illegal and as such, the petitioner does not deserve to be reinstated in view of the ratio laid down in a case of Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. A. Gopalan, . holding therein that acquittal in a criminal trial on the same charge on which departmental proceeding was initiated, will have no bearing upon the order passed in a departmental proceeding whereas it has been laid down in a case of G.M. Tank v. State of Gujarat and Ors. (supra) relied upon by the petitioner that order of dismissal is not sustainable where delinquent is acquitted honorably of the charge upon which departmental proceeding has been initiated and hence, the said decision is not applicable in the present case as it has already been noticed that the petitioner has not been acquitted honorably, rather he has been given benefit of doubt.

6. Accordingly, I do not find any merit in this writ petition.

7. Hence, this writ petition is dismissed.