

(2011) 08 DEL CK 0189

In the Delhi High Court

Case No : Writ Petition (C) No. 4941 of 2000

George N.S.

APPELLANT

Vs

Comm. of Police

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Delhi Police Act, 1978 — Section 21(3), 23
Penal Code, 1860 (IPC) — Section 384, 506

Citation : (2011) 7 AD 416 : (2011) 183 DLT 226

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : B.B. Bhatia, Rajendra Sahu, Navjot Kumar and Karan Khanna, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Allowed

Judgement

M.L. Mehta, J.—The Petitioner, at the relevant time, was posted as Constable in Delhi Police. Allegedly he had threatened one Mr. Rajiv Sharma on his telephone to pay him Rs. 50,000/-, otherwise it could be dangerous for his life. The telephone call was received by Nurse Licy posted in the hospital of Dr. Rajeev Sharma. The Petitioner who threatened on telephone claimed himself to be a gangster of LTTE. Dr. Rajeev Sharma directed Nurse Licy to fix an appointment with the person who had called him to pay the amount in case of receiving telephone call. On 14th December 1991, he allegedly rang up at 10 am and repeated the same words. On this Nurse Licy fixed a time and venue. On the same day, near the gate of Vishal Cinema at about 3.45 pm; a young man whose name was later on disclosed as George N.S. came there and talked with Nurse Licy and as soon as he accepted the bag of money which was containing plain papers, Nurse Licy gave signal and the police personnel who were nearby, apprehended George N.S. who had been working as Constable with Delhi Police Control room. On this basis, an FIR bearing number 351 dated 14th December 1991 under Sections 384, 506 IPC Police Station Sultanpuri was registered and

the said Constable was arrested. He was placed under suspension with effect from 14th December 1991. However, later on he was reinstated vide order dated 3rd December 1993. The Departmental Enquiry was entrusted to Insp. Dahia, which was later on transferred to Inspector Tyagi on 20th November 1992. The enquiry was held in abeyance vide order dated 30th December, 1992 till the final verdict of the Criminal Court in case u/s 384, 506 IPC PS Sultanpuri. It was restarted and entrusted to Inspector Salma Khan and later on was transferred to Inspector Veer Bala on 23rd October 1998. In the meantime, Constable George N.S. was acquitted in the criminal case by learned Metropolitan Magistrate vide his judgment dated 21st September 1998, as before the Court of learned Metropolitan Magistrate, the prosecution failed to lead any evidence except Nurse Licy who was examined-in-chief, but did not appear for cross examination for many years. The case property comprising of plain paper notes was also not produced at any point of time. The case being pending for about 7 years, the Court recorded acquittal of George N.S. on account of lack of evidence against him. The departmental enquiry was completed by Inspector Veer Bala who recorded charge against the Petitioner as proved beyond reasonable doubt. In response to show cause notice, the Petitioner submitted his representation, which came to be considered by the Disciplinary Authority. While maintaining the findings recorded by Enquiry Officer Inspector Veer Bala, the Disciplinary Authority also recorded that while in the criminal case, evidence of Nurse Licy could not be taken into account because her cross examination could not be recorded, in the Departmental Enquiry, she had deposed in favour of the prosecution and thus there being much more evidence in favour of prosecution in the Departmental Enquiry than what was available in the criminal case, the charge against the Petitioner stood logically proved. While recording these observations, the Disciplinary Authority also noted that although the service record of the Petitioner was clean, but such a serious criminal act on his part rendered him unfit to remain in the force. Consequently, a dismissal order was passed against the Petitioner George N.S. with immediate effect. His suspension period from 14th December 1991 to 2nd December 1993 was also treated as a period not spent on duty.

2. A statutory appeal against the order of Disciplinary Authority was preferred by the Petitioner to the Additional Commissioner of Police u/s 23 of Delhi Police (Punishment and Appeal) Rules, 1980 (for short, "the Rules") against the order dated 11th September 1999 as passed by the Disciplinary Authority. The Appellate Authority maintained the order of Disciplinary Authority, recording that the Appellant has already been held guilty in an enquiry under the Rules and as such there was no need to examine his case under Rule 12 of the Rules. The orders of Disciplinary Authority and the Appellate Authority were challenged before the Central Administrative Tribunal (CAT) which came to be dismissed vide the impugned order dated 22nd January 2000. While summarily rejecting the application of the Petitioner, CAT observed as under:

We have perused the order passed by the Criminal Court and we find that Ms.

Licy who has been examined in the criminal court was not made available for cross examination. This was the substantial ground which has led to the acquittal of the applicant. As far as Ms. Licy is concerned, she was made available in the disciplinary proceedings. She was examined in chief and thereafter cross examined. Since the order of acquittal was passed on the ground that she had not made herself available for cross examination, the acquittal can be said to have been passed on technical grounds. Similarly, her evidence which was not available for cross examination in the criminal court was made available in the disciplinary proceedings. Hence, additional evidence had become available in the disciplinary proceedings. In the circumstances, the case falls under the exception carved out in Clauses (a) and (e) of Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 which has been relied upon by the applicant in support of his contention. As far as the finding of guilt is concerned, the same is based on evidence which has been led in the disciplinary proceedings. It is impermissible for this Tribunal to re-appreciate evidence and to come to a finding contrary to the one arrived at by the disciplinary authority.

3. The impugned order of CAT is in challenge before us in the present writ petition.

4. We have heard learned Counsel for the Petitioner as well as for the Respondent.

5. The interpretation of Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 is in question in this writ petition. Before advertng to the interpretation of this Rule, it is essentially appropriate to see the law as to whether the criminal as well as departmental proceedings could be initiated simultaneously and if so, the circumstances and its effect.

6. In the case Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, the order of dismissal in the departmental proceedings had already been passed before the criminal case which ultimately resulted acquittal of the Appellant. The question for consideration before the Apex Court was as to whether the acquittal coupled with other circumstances, specially ex parte proceedings of the case, will have the effect of vitiating the departmental proceedings or the order of dismissal passed against the Appellant. While reiterating that the proceedings in the criminal case and the departmental proceedings could proceed simultaneously, the Apex Court held thus:

13. As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to

misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings, the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

7. In the case of G.M. Tank Vs. State of Gujarat and Another, the Appellant was charged for offence of acquisition of movable and immovable properties disproportionate to his known sources of income. After holding departmental enquiry, he was dismissed from service by order dated 21st October, 1982. Against the said dismissal order, the Appellant filed a Writ Petition before the High Court. The Single Judge concluded that there was sufficient evidence against the Appellant and dismissed the petition. Against the order of Single Judge, the Appellant preferred LPA and raised the relevant contentions. The Division Bench dismissed the LPA by confirming the order of the Single Judge and then the matter was taken up to the Supreme Court. Referring to various judgments on the point that acquittal of the Appellant by the criminal court does not ipso facto absolve him from the liability of the disciplinary proceedings and that since the Appellant was acquitted by the criminal court, the departmental order dismissing him from service deserve to be quashed and set aside and also that each case is required to be considered in the backdrop of its facts and circumstances, the Apex Court held as under:

30. The judgments relied on by the learned Counsel appearing for the Respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the Appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the Appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely raid conducted at the Appellant's residence, recovery of articles therefrom. The Investigating Officer Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the Appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt

alleged against the Appellant beyond any reasonable doubt and acquitted the Appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the Appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the Appellant deserves to be allowed.

8. The Rule 12 of the Rules reads as under:

12. Action following judicial acquittal.- When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless;

- (a) the criminal charge has failed on technical grounds; or
- (b) in the opinion of the court, or the Deputy Commissioner of Police the prosecution witnesses have been won over; or
- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available.

9. From the plain reading of the aforesaid Rule, it would be clear as to what is prohibited is that when a police officer is acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether the same was actually led or not. However, there were few exceptions to the said prohibition. One of those being that if the criminal charge has failed on technical grounds and the second being that additional evidence was available in the departmental proceedings. As per the interpretation of both these Exceptions as provided in Clause (a) and (e) as enumerated above, what needs to be considered is as to whether the case of the Petitioner will fall in any of the two clauses namely whether he was acquitted

on technical ground or whether there was some additional evidence available in the departmental proceedings, which was not available before the criminal court. If the case falls under any of the two, then these exceptions would apply and the departmental proceedings would be maintainable, even if the Petitioner stood acquitted by the criminal court.

10. Rule 12 of the 1980 Rules came up for interpretation before a Division Bench of this Court in *Government of NCT of Delhi and Ors v. Rajpal Singh*. The Hon'ble Bench dealing with the issue held that in terms of Rule 12, a delinquent officer cannot be punished departmentally if on the same charge he has been acquitted by a criminal court. The Bench also referred to Section 21(3) of the Delhi Police Act and in terms thereof held that criminal prosecution is not barred even if the delinquent officer is departmentally proceeded with, though it was a case where the criminal court had acquitted the accused Respondent. It was further observed that the power for initiation of departmental proceedings could be exercised by the Appellants only when any of the exceptions as provided in Rule 12 is satisfied, and that there could be no two opinions to the fact that both departmental and criminal proceedings can be initiated simultaneously. But so far as a constable of Delhi Police is concerned, it was observed, there is a specific statutory rule which bars initiation of departmental proceedings after acquittal in a criminal case to which certain exceptions are provided in the nature of Clauses (a) to (e) and, therefore, under the substantive provision, no departmental proceedings could be initiated once the Respondent was acquitted by the criminal court. This view was reiterated by this Court in its decision dated 21.4.2005 in Writ Petition (C) No. 4431 to 4433 of 2005 in the matter of *Government of NCT of Delhi and Ors v. Satya Dev Singh*. Petition for Special Leave to Appeal filed against the judgment of this Court was dismissed by the Hon'ble Supreme Court vide order dated 21.11.2005.

11. Thus, it would be essential to see as to whether the acquittal recorded by learned MM was on technical ground or not. It may be reiterated that the Petitioner was charge-sheeted vide FIR No. 351 in the year 1991. The prosecution has failed to examine before the criminal court not only the witnesses Dr. Rajeev Sharma & Ms. Licy, but also the other witnesses who were police officials. The court repeatedly adjourned the case for the prosecution evidence, but no efforts were seen to have been made by the prosecution in leading evidence. Ms. Licy, whose examination-in-chief was recorded, was never produced for her cross examination. Even the case property, the plain paper notes, were also never produced. Left to this situation, the Court had no option, but to close the evidence and record acquittal stating that the prosecution has not been able to prove its case beyond reasonable doubt. The recording of acquittal being clear, it cannot be said to be based on technical ground.

12. The acquittal on account of prosecution failing to prove its case beyond reasonable doubt or on account of lack of evidence or no evidence cannot be termed as acquittal on technical ground. Such grounds i.e. technical ground,

would be, to illustrate a few, limitation which has now been prescribed by recent amendment in Code of Criminal Procedure or trial without obtaining sanction as required u/s 197 Code of Criminal Procedure in cases where it is required and the trial being held without obtaining such sanction. If the legislature intended that acquittal on account of benefit of doubt or prosecution failing to prove a case beyond reasonable doubt etc. were not to be a bar in the departmental proceedings, it would have so specifically provided as Exception in Rule 12. The legislature could not be oblivious of the situation as mentioned above, particularly when we know that most of the acquittals are based on the failure of the prosecution to prove the case beyond reasonable doubt or on account of benefit of doubt. The legislative wisdom only refers to acquittal on technical grounds as one of the exceptions for holding departmental proceedings. By any means we cannot hold that failure of the prosecution to lead evidence per se, would amount to acquittal on technical ground. The acquittal resulting on account of prosecution not leading evidence or leading insufficient evidence would definitely stand on different footing than acquittal resulting on technical ground. In the former case, the acquittal would be clean acquittal and even the words like "benefit of doubt" or "failing to prove beyond reasonable doubt" would be superfluous. The Petitioner was acquitted by learned MM because there was no evidence led by the prosecution for many years and even the case property was also not produced for any justifiable reason. Such acquittal could not be said to be on a technical ground since the charges were not proved and the decision was arrived at on the basis of no evidence on record. A Division Bench of Punjab and Haryana High Court in Bhag Singh v. Punjab and Sind Bank 2006 (1) SCT 175 held that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of "benefit of doubt" by a criminal court is superfluous and baseless and such an acquittal is an "honourable acquittal". Another Division Bench of Punjab and Haryana High Court in Shashikumari v. Uttari Haryana Bijli Vitran Nigam 2005 (1) ATJ 154 has taken the same view. The instant case, however, appears to be on a better footing. Thus, we have no hesitation in arriving at a conclusion that exception (a) to the prohibition was not attracted in the present case.

13. With regard to second exception namely availability of additional evidence before the departmental enquiry also, we are constrained to record that there was no additional evidence available before the departmental enquiry. All the witnesses cited before the criminal court as well as in departmental enquiry proceedings were the same. What was prohibited under Rule 12 was that, if a police official was acquitted by a criminal court, he could not be punished departmentally on the same charge or for different charge, based on the same evidence, irrespective of the fact whether the evidence was actually led or not. In the present case, the witnesses cited before the criminal court as also before the departmental enquiry being the same, the examination of Ms. Licy in the departmental proceedings cannot be said as an additional evidence available in the departmental proceedings. She was the same witness who was examined in

chief, but did not appear for her cross examination and so her evidence could not be read in the criminal case. Irrespective of the fact that her evidence was not actually led in the criminal case, the fact remains that she would not be treated as additional evidence in the departmental proceedings. The additional evidence would mean the evidence which was not cited in the criminal case.

14. We have carefully considered the judgment of the criminal court as also the impugned judgment as well as the orders of the disciplinary authority and the Appellate Authority. It is surprising to note that Nurse Licy did not appear before the criminal court for her cross examination, but she was made available for her statement in the departmental enquiry within no time of its initiation by Inspector Veer Bala, Nurse Licy who is none but the wife of Constable Nasiruddin, constable posted at Police Station Sultanpuri. That being so, it was all the more easier for the police to produce her for cross examination in the criminal court. Non-examination of Nurse Licy in the criminal court apparently smells something fishy and creates doubt in the prosecution case. The plain paper notes allegedly handed over to the Petitioner, were never produced before the criminal court. Not only that, the complainant Dr. Rajeev Sharma was not produced, no other witness who were police officials were produced before the criminal court. The departmental proceedings were kept in abeyance and it appears that when the court started expressing its anguish because of non examination of any witness, that the departmental proceedings were reopened, instead of prosecution making any effort to examine its witnesses in the criminal court. Apparently this appeared to be an easy way to record the guilt, instead of allowing the witnesses to be exposed in the criminal court. The story as set up by the prosecution that the Petitioner demanded Rs. 50,000/- from Dr. Sharma stating himself to be a member of LTTE, appears to be a concocted one. There is no iota of evidence led in this regard except bald statement of Nurse Licy who was apparently an interested person, being the wife of Constable Nasiruddin posted at Police Station Sultanpuri. It also seems to be not appealing to any reason that how the Petitioner could only choose Dr. Sharma who was neither reputed nor a rich doctor, but appeared to be a smalltime Ayurvedic doctor doing practice in a remote village area of the city.

15. The way statements of witnesses were recorded by Inspector Veer Bala appears to be shocking. Though the same are not to be analyzed or re-appreciated in the present proceedings, the same seems to have been recorded in a very cursory manner with the pre-determined finger of guilt pointing towards the Petitioner. The Petitioner had presented his defence of having come to know Nurse Licy while traveling together in the train and having made telephone calls to her to the annoyance of her husband Nasiruddin and consequent false implication. This has not at all been considered by the enquiry officer and by the Disciplinary Authority as well as the Appellate Authority. When the Petitioner was not provided any departmental representative to represent him or the legal assistance in the departmental enquiry, it was desirable on the part of the enquiry officer to have considered the defence of the Petitioner and confronted

the same to Nurse Licy. The Petitioner seems to have gone through with the enquiry proceedings as unrepresented and that has apparently caused serious prejudice to his defence. The Disciplinary Authority as well as Appellate Authority without appreciating that the charges leveled against the Petitioner were grave and serious, and were to result into serious consequences, have blindly proceeded to accept the enquiry report. The charges which were leveled against the Petitioner in the criminal court as well as in the departmental enquiry being based on the same facts, evidence and the material, the prosecution ought to have demonstrated more responsibility and seriousness in prosecuting the case before the criminal court, instead of allowing the same to die and to have recourse to easier channel for recording the guilt. The Enquiry Officer noted down the short statements of witnesses and recorded, one-line conclusion that "the charge stands proved against the Petitioner George N.S. beyond reasonable doubt". The Disciplinary Authority while noting down that although the service record of George N.S was clean, proceeded to record that such a criminal act has resulted him unfit to be retained as a member of the force and then proceeded to order his dismissal. The Appellate Authority while believing the findings of Disciplinary Authority simply recorded that Petitioner was already facing departmental enquiry, there was no need to examine his case under Rule 12 of the Rules. Both the orders seems to have been passed without application of mind.

16. Surprisingly, CAT also fell in error while recording that acquittal by the criminal court was on technical ground and that the evidence of Nurse Licy made before the Disciplinary Authority was an additional evidence which was not available before the criminal court. The Tribunal has also erred in recording that it was impermissible for it to appreciate the evidence and come to a finding contrary to the one as arrived at by the Disciplinary Authority. We have not been able to understand as to how it was impermissible for the Tribunal to re-appreciate the evidence which was before the Disciplinary Authority.

17. Both on law as well as on facts, we are of the view that there was no justification in taking departmental action against the Petitioner. Neither the Disciplinary Authority nor the Appellate Authority considered either the applicability of Rule 12 of the Rules, 1980 or the manner in which the Petitioner came to be acquitted or the defence stated by him from the very beginning. At one stage we thought of quashing the impugned order with directions to CAT to examine the issue afresh, but having seen that the entire departmental proceedings have been prejudicial, it would be an exercise in futility to remit the case to CAT for taking decision afresh.

18. In view of the discussion made above, we allow this petition and set aside the impugned judgment of CAT. We also quash the orders dated 18.06.1992 and 23.10.1998 of initiation of departmental proceedings and also set aside the order dated 11.09.1999 of Disciplinary Authority as well as dated 22.12.1998 of Appellate Authority. Consequently, the Petitioner shall be entitled to all the

consequential reliefs as admissible under the applicable Rules. Keeping in view the facts of the case, there shall be no orders as to costs.