

(2000) 07 PAT CK 0048
In the Patna High Court
Case No : L.P.A. No. 1330 of 1997

Md. Farooque Azam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 120, 120B, 409, 467, 468
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)
Prevention of Corruption Act, 1988 — Section 13, 13(1)

Citation : (2001) 1 PLJR 561

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Ram Chandra Jha and Sanat Kr. Jha, for the Appellant; V.N. Sinha and Ajadshatru, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—This is a Letters Patent Appeal on behalf of a State Government employee, an Assistant Engineer, with the Water Resources Department, Govt. of Bihar.

2. The petition had been filed for the purposes of quashing the order of 15 September, 1993 appended as annexure 1 to the writ petition. This is the order by which the Petitioner was suspended in pursuance of departmental proceedings and during the period of suspension was not entitled to anything except the subsistence allowance. Secondly, he was to be placed at the bottom of his scale of pay. Lastly, he was to face further proceedings in pursuance of the criminal case which was pending consequent upon case No. 42 of 1989 reaching a conclusion. In so far as the last aspect was concerned, the criminal case itself was quashed by the High Court on the petition of the Petitioner i.e. Criminal Miscellaneous No. 5469 of 1992: Md. Farooque Azam and Anr. v. The State of Bihar. The order passed by the High Court is reproduced:

Heard the parties.

This application has been filed for quashing prosecution of the two Petitioners in a case under Sections 409, 120, 467, 468, 471 and 120B of the Indian Penal Code and Section 5(1)(c)(d) and 5(2) of the Prevention of Corruption Act, 1947 read with Sections 13(1)(c)(d) and 13(c) of the Prevention of Corruption Act, 1988.

The sole ground taken on behalf of the Petitioners for quashing the prosecution is delay in trial. It appears that allegation against the Petitioners is defalcation of Rs. 1090/-. The occurrence is said to have taken place in the year 1975 and cognizance in the present case was taken in the year 1992. There is nothing to show that delay has been caused on account of any act of accused persons. Moreover, it appears that both the Petitioners who are Government servants, were departmentally proceeded by Government and in that proceeding the Petitioners were censured.

In view of the aforesaid facts, I am of the view that allowing prosecution of the Petitioners to continue would amount to an abuse of the process of the court as such, it is just and expedient to quash the prosecution. Accordingly, this application is allowed and prosecution of the Petitioners is quashed.

3. Two issues remained on the departmental proceedings. In so far as the suspension of the Petitioner is concerned by that very order he was to receive only the subsistence allowance during the period of suspension and that order was also revoking the suspension. The balance which remained was an administrative punishment that the Petitioner would be relegated to the bottom of the scale of the post which he was holding.

4. In these circumstances the writ petition had been filed. The order which the Petitioner challenged in the writ petition was of 15 September, 1993. The writ petition had been filed on 30 September, 1996. The writ petition was dismissed on the ground of limitation. The learned Judge consigning the petition to the record by not entertaining it on merits was of the view that there has been inordinate delay in presenting the petition, as such, the Petitioner could not be entitled to seek any relief on his petition. Aggrieved the Petitioner has filed the present Letters Patent Appeal.

5. The Court has heard learned Counsel for the Petitioner-Appellant through Mr. Ram Chandra Jha, Senior counsel assisted by Mr. Sanat Kumar Jha and learned State counsel Mr. V.N. Sinha, Government Pleader No. 9. The contention on behalf of the Petitioner-Appellant on appeal has been that once the criminal proceedings upon the First Information Report which had been filed by the State stood quashed, while a departmental enquiry could have continued, yet without going into a detailed enquiry, he could not have been punished to be placed at the bottom of the scale of the post which was he holding. From the record it was pointed out that when the High Court had quashed the criminal proceedings the basic reason was that the trial which had been initiated by the filing of a FIR in the year 1989 upon an incident of 1975 had not even seen any positive

proceedings till the year 1992 i.e. for a period of 17 years. The allegation against the Petitioner of falsification of wages having been paid to workers could not be made out as the State could not present any evidence. The trial failed because the State had no material to prove the allegation except for dragging the proceedings. It was accepted that a departmental proceeding may be held notwithstanding that a criminal proceeding may be going on simultaneously. On this aspect no issue was raised. But, without & departmental proceeding to inflict a punishment when there is nothing on record to sustain the punishment entitles the Petitioner to seek the quashing of either the suspension or the departmental proceedings.

6. The proposition on behalf of the Appellant was strenuously contested through learned State counsel. The first argument advanced on behalf of the State was that the Petitioner-Appellant ought not to be shown any indulgence in filing a belated petition when the order which has been impugned is dated 15 September, 1993. The contention is that he ought to have approached the High Court by a writ petition immediately after the order which aggrieved him, as has been impugned. While on this point, no satisfactory explanation seems to be forthcoming before the Court that the State had a trial pending against the Petitioner of incidents which occurred, 17 long years ago. The trial did not proceed after the FIR was filed in 1989 and worst on an incident which took place in 1975 the FIR was filed after 14 years in 1989. In the circumstances, the plea of learned State counsel that the petition had been filed (sic) weighing the cases of both parties, does not appeal to the court in this appeal. The State does not seem to have shown any urgency in instituting the FIR and when it did report a crime, it was written on the wind that both the investigation and the trial would be (sic) as no evidence will be available after 14 years.

7. Now, returning to the main aspect, that is the merits, whether the Petitioner is entitled to a relief on the petition. The al-legation which had been made against the Petitioner could not be sustained even in a departmental enquiry. All that is left is a record of a criminal case which could not proceed. The witnesses were not even available in the departmental proceedings. At best one could say that there was a shortfall of accounting to the extent of Rs. 1090/-, an allegation against the Petitioner. In the counter affidavit which has been filed in answer to the writ petition, the State accepts that after due consideration of the report of the Enquiry Officer the charge of negligence was found proved against the Petitioner. The only question is that what started as an allegation of a criminal nature ultimately rested on carelessness or negligence. What should be the measure of punishment in a departmental proceeding in such cir-cumstances? Should a delinquent receive the maximum punishment to be sent down to the bottom of his scale? On this learned State counsel submitted that the word "negligence" used in paragraph 2 of the counter affidavit is the mistake at the time of drafting the counter affidavit. The Court is making no comments on this and would leave it as a questionable record. The Court did give an opportunity to learned State counsel that in an affidavit which had seen affirmation by a Deputy

Secretary to the Government who took the responsibility of swearing the affidavit and putting his signature to it, perhaps after reading the counter affidavit, counsel's submission could be accepted provided he files a personal affidavit that the error was occasioned at his instance, and thereafter the Deputy Secretary may reaffirm the affidavit of counsel for the State. On this indication by the Court learned Counsel for the State chose to abandon this aspect of the matter.

8. The record now remains is of allegations against the Petitioner in a departmental proceeding that he was negligent in his charge. The Court cannot be swayed by any allegations which were made in the FIR a proceeding quashed by the High Court earlier.

9. In the circumstances, the maximum punishment is not compatible or consistent with the balance of the allegations which remain on the record. The punishment awarded to the Petitioner to put him at the bottom of the scale of the post which he is holding is, thus, quashed. The matter will now receive the attention of the disciplinary authority first to consider whether the Petitioner would be entitled to punishment at all in the facts and circumstances of the case or the punishment which he has already received was enough or any lighter punishment as from the date when the earlier order on punishment was passed.

10. The appeal succeeds. The order of the learned Judge dated 24 September, 1997 is set aside. The appeal is allowed with costs.