
(1988) 11 AP CK 0002
In the Andhra Pradesh High Court

Mohd Shabeer Ali

APPELLANT

Vs

A.P. State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 24-11-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 304A

Citation : (1990) 1 ACC 560

Hon'ble Judges : Ramaswamy, J

Bench : Single Bench

Judgement

Ramaswamy, J.—The petitioner was a driver. On September 21,1984 at about 9-45 p.m., while he was driving the vehicle APZ 9444 on route No. 1 Secunderabad to Afzal Gunj, an accident had taken place at Musheerabad whereat the rider of the Luna bearing ABK 7450 came in opposite direction and he died at that accident. As a result the petitioner was prosecuted u/s 304A of the Indian Penal Code and simultaneously proceedings were initiated under the A.P. S.R.T.C. Employees (Conduct) Regulations, stating is to be a misconduct. After giving show cause notice and giving opportunity, the order of removal dated April 9,1985 was passed by the disciplinary authority. Assailing the legality thereof, the writ petition has been filed.

2. The finding of the authority is that the petitioner has driven the bus in a high speed and therefore the accident has taken place, as a result, removed him from service. The contention of Sri Govardhanachari, learned Counsel for the petitioner is that in the criminal proceedings. C.C. No. 404/84, by judgment dated July 29, 1986, the learned 12 Metropolitan Magistrate found in para 12 thus:

Further it is also clear on record that the prosecution could not adduce positive material evidence to show that the death of the deceased was due to hit given Jay the RTC bus or due to the direct result of the hit given by the RTC bus driven by the accused moreover admitted by deceased caught with fire soon after the

impact and the reason for the death of the deceased is not got elected by the prosecution by producing positive evidence. Under such circumstances, the Court cannot come to a conclusion that the death of the deceased was due to impact and due to the rash and negligent act of the accused driver.

3, Thus it is clear that there is no positive evidence that under what circumstances the accident took place. The petitioner's case although has been that he was running the vehicle in a normal speed; the driver of Luna came rashly in the opposite direction and hit the bus; since he was coming in a high speed, when the vehicle has skidded, immediately fire broke out due to spilling of petrol and he died on the spot, and that he was not in any way responsible for the accident. He also gives an explanation in his earlier statement and also in the writ petition thus:

After a little distance, some 4 or 5 lorries were parked at the Timber shop on the left side of the road and one bullock cart was passing besides the parked lorries; on hearing the horn given by me that bullock cart driver has given hand signal to pass ahead. While I was negotiating the bullock cart, suddenly the Luna driver came from the opposite direction, dashed the bus at the right side of the vehicle. Due to the impact with the bus, the Luna driver fallen on the ground and the petrol from the Luna tank spilled on the body of the Luna rider. Due to the heat of the engine of Luna and some spark of the silencer, the rider of the Luna was caught with fire and he died on the spot.

4. His explanation now fits in with the finding recorded by the learned Magistrate in his judgment. Thereby it is clear that the petitioner was acquitted honourably though the ultimate conclusion of the learned Magistrate is that he was acquitted giving benefit of doubt. From these facts, the contention raised by Sri Harinath, learned Standing Counsel for the Corporation is that the subsequent acquittal cannot be taken into account when the petitioner was removed from service before he was acquitted. I find it difficult to accept the contention. It is now well settled that subsequent events can always be taken note of when the matter is finally decided by this Court. Therefore, merely because the acquittal was made after removal order was passed, the acquittal order cannot be brushed aside. It is no doubt true in Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, , Fazal Ali, J. speaking for the Court held that the acquittal by a Criminal Court does not preclude the authorities from taking disciplinary proceedings since the disciplinary proceeding are independent of the criminal proceedings. But if there is any acquittal on merits, then the evidence recorded would be a best piece of evidence and the charged officer is entitled to the benefit of those findings. The very charge levelled against the petitioner in the departmental proceedings as well as the proceedings before the Criminal Court viz., Section 304A of the Indian Penal Code - that he has driven the vehicle rashly and negligently resulting in the death of the deceased. Now the finding is that there is no evidence connecting the sequence of death of the Luna rider. That finding is a material finding for the purpose of deciding the

misconduct of the petitioner under the regulations. Therefore, when the charged officer was acquitted on merits, though ultimately giving benefit, he is entitled to place reliance on the finding recorded in the judicial proceedings by the learned Magistrate.

5. It is next contended by Sri Harinath, that it is open to the disciplinary authority to pursue the disciplinary proceedings and give a different finding than one recorded by the Magistrate. When the finding is based on record, it is not a case warranting interference under Article 226 of the Constitution. I find it difficult to accept this contention. It is true that it is always open to the disciplinary authority to record its findings on the basis of the material on record. But when the self same charge is the subject matter in the criminal proceedings and the accused is acquitted of the self same charge, then necessarily he is entitled to the advantage of the acquittal. As stated earlier, it should be taken note of in moulding the relief. When the very charge of rash and negligent driving is knocked of its bottom in the criminal case then it would be a needless harassment to the petitioner in pursuing the disciplinary proceedings and pass an illegal order or removing the charged officer from service on the self-same ground. Once the finding recorded by the criminal court becomes final, it should be given effect to and the consequences should be given effect to add the consequences should flow from the findings recorded. If it were a case that the acquittal was on mere technical grounds, then it is open to the authorities to pursue the disciplinary proceedings and record its own finding. When the acquittal is on merits, pursuing the disciplinary proceedings or removing on the same charge is illegal and is in excess of power.

6. Accordingly, I hold that the finding recorded by the disciplinary authority that the petitioner has rashly and negligently driven the vehicle causing the death of the Luna rider is now not a valid finding in law in view of the order of acquittal having been allowed to become final. Accordingly there is a manifest error apparent on the face or record warranting interference. The writ petition is accordingly allowed and the impugned order is quashed. No costs.