
(1973) 11 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4071 of 1972

Narasimha

APPELLANT

Vs

Production Engineer and Another

RESPONDENT

Date of Decision : 08-11-1973

Acts Referred:

Probation of Offenders Act, 1958 — Section 12, 3
Railway Property (Unlawful Possession) Act, 1966 — Section 3
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 14

Citation : AIR 1974 AP 264

Hon'ble Judges : Gopal Rao Ekbote, C.J.;Lakshmiah, J

Bench : Division Bench

Advocate : A. Venkatiah, for the Appellant; A. Raghuvir, for the Respondent

Judgement

Gopal Rao Ekbote, C.J.—This is an application filed under Art 226 of the Constitution for the issue of a writ of certiorari to quash the order of the 1st respondent dated 5-4-1972 and that of the 2nd respondent confirming the same dated 1-7-1972. It arises in the following circumstances.

2. The petitioner was employed as a Khalasi on 3-12-1952. He was promoted thereafter on 18-1-1967 as furnace man. He was found to be in possession of copper wires belonging to the Railway. He was therefore prosecuted u/s 3(a) of the Railway Property (Unlawful) Possession Act, 1966. The Trial Court found him guilty under the said section and sentenced him to undergo rigorous imprisonment for one month. The petitioner therefore filed Criminal Appeal No. 126 of 1971. The Chief City Magistrate-cum-Addl. Sessions Judge and District Magistrate, Hyderabad by his judgment dated 19-8-1971 agreed with the conclusion of the trial Court that the petitioner has committed the offence in question. The learned Judge, however, considering the fact that the writ petitioner was a first offender chose to deal with him u/s 3 of the Probation of Offenders Act, 1958. He therefore modified the sentence awarded by the trial Court and admonished him u/s 3 of the Probation of Offenders Act and he was

thereafter released.

3. While so, the petitioner was removed from service under Rule 14 of the Railway Servants (Discipline etc.) Rule, 1968 by the impugned orders. This writ petition is filed to question the correctness of those orders.

4. The principal contention of the learned Advocate for the petitioner is that in view of Section 12 of the Probation of Offenders Act the petitioner could not have been removed from service on the ground of his conviction under Rule 14 of the Rules.

5. In order to appreciate the contention of the learned Advocate for the petitioner, it is necessary to read Rule 14. It reads:

"Notwithstanding anything contained in Rules 9 to 13:---

(I) Where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on criminal charge; or

* * * * *

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit"

6. Rules 9 to 13 relate to the procedure for imposing major penalties on a due enquiry in a disciplinary proceeding of the charges against the railway servants.

7. What is plain is that while under Rules 9 to 13. a railway servant can be punished for certain charges after a due enquiry into them, Rule 14 permits the punishing authority to pass such orders as it thinks fit including the punishment of removal from service on the basis of the conviction of any railway servant on a criminal charge. If the authority desires to remove a railway servant under Rule 14 on the ground that he has been convicted on a criminal charge, no enquiry is postulated as is the case in a proceeding under Rules 9 to 13.

8. Now Section 3 of the Probation of Offenders Act states that when any person is found guilty of having committed an offence punishable with imprisonment for not more than two years, with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then notwithstanding any thing contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct u/s 4, release him after due admonition. It is relevant to notice at this stage whether the prosecution of the petitioner u/s 3(a) of the Railway Property (Unlawful Possession) Act, 1966 can come within the ambit of Section 3 of the Railway Property (unlawful Possession) Act 1966 enjoins that whoever is found, or is proved to have been, in possession of any railway property reasonably suspected of having been stolen or unlawfully obtained shall, unless he proves

that the railway property came into possession lawfully, be punishable (a) for the first offence with imprisonment for a term which may extend to five years, or with fine, with both and in the absence of special and adequate reasons to be mentioned in the judgment of the Court, such imprisonment shall not be less than one thousand rupees. It is not necessary to read clause (b) of that section because admittedly the petitioner's offence was first offence which falls under clause (a) only.

9. What becomes immediately plain is that u/s 3 of the Railway Property (Unlawful possession) Act, the petitioner could have been sentenced to a term which may extend to five years or with fine or with both. The question therefore is whether to such a case. Section 3 of the Probation of Offenders Act is applicable. We have already noticed that it is applicable to a case, whether it is under the Indian Penal Code regarding any one or more of the Section referred to in Section 3 of the said Act or under punishable with imprisonment for not more than two years or with fine or with both. Any prosecution therefore u/s 3 of the Railway Property (Unlawful Possession) Act cannot be brought within the purview of Section 3 of the Probation of Offenders Act because the sentence which can be awarded is more than two years or with fine or with both.

10. In spite of this position of law the Chief Magistrate without even looking into the section applied the provisions of Section 3 of the Probation of Offenders Act to the facts of the case before him. Unfortunately his attention also was not drawn that Section 3 would be inapplicable to such cases. If that had been done, he may not have given the benefit of Section 3 of the Probation of Offenders Act to the writ petitioner and released him on admonition. We have already noticed that he had confirmed the conviction of the accused for the offence in question and agreed in that behalf with the view of the trial Court.

11. It is in the light of this position of law that we have to consider the effect of Section 12 of the Probation of Offenders Act, It reads :

"Notwithstanding anything contained in any other law , a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any , attaching to a conviction of an offence under such law ."

12. If the petitioner had been rightly with u/s 3 of the Probation of Offenders Act , there can be very little doubt that as a result of Section 12 of the said Act, he could not have been removed from service under Rule 14 of the Railway Rules. If the Railway wanted to remove him from service or inflict any other punishment , they should have followed the procedure laid down in Rules 9 to 13 which they did not.

13. That if the first offender has been dealt with u/s 3 of the Probation of Offenders Act, then u/s 12 he cannot be removed from service on the basis of such conviction is now firmly settled. See Akella Satyanarayana Murthy Vs. Zonal Manager, Life Insurance Corporation of India, Madras, . Narasimham, J. (as he

then was) speaking for the Division Bench reviewed two earlier Madras High Court decisions and laid down the proposition as follows :

"There is a clear distinction between dismissing an official for his conduct and dismissing an official for his conviction ."

14. What is plain from the said decision is that if the dismissal or removal from service flows from conviction , then Section 12 of the Probation of Offenders Act prohibits that . But Section 12 does not take away the power of the punishing authority to deal with the public servant under the ordinary disciplinary proceedings for the same set of facts .

15. In view of this position of law, we would have ordinarily quashed the order because the impugned orders are based merely on the conviction of the writ petitioner in view of Section 12 of the Probation of Offenders Act.

16. We have, however , to consider the effect of the Chief City Magistrate's order approving the conviction on the one hand and applying Section 3 of the Probation of Offenders Act to the case to which it was not applicable on the other .

17. Now, Section 3 of the Probation of Offenders Act indisputably discloses upon the courts trying the offenses enumerated therein. It is only in cases where the offence is one which falls within the ambit of Section 3 that the offender can be released after due admonition. What follows is that if the offence did not come within the purview of Section 3, the Magistrate would have no jurisdiction whatsoever to deal with the offenders applying the provisions of the Probation of Offenders Act. The accused could not have been released on admonition in a case to which Section 3 does not apply. In other words , the Chief City Magistrate had not jurisdiction to bring a case u/s 3 of the Railway Property (Unlawful Possession) Act within the ambit of Section 3 of the Probation of Offenders Act because it prescribes a punishment of more than two years or with fine or with both. Once it is found that the Chief City Magistrate had no jurisdiction to release the accused after due admonition u/s 3 of the Probation of Offenders Act, what follows necessarily is that Section 12 cannot apply to such a case. The order of admonition u/s 3 was without jurisdiction and therefore that part of the order of the Chief City Magistrate will have to be held as a nullity. Consequently the benefit of Section 12 would not be available to a person who has been released after admonition in a case to which Section 3 of the Probation of Offenders Act does not apply . We are therefore clear in our minds that in the instant case, since the administration of admonition u/s 3 was without jurisdiction , the benefit of Section 12 cannot go to the petitioner.

18. If that is so, then the conviction upheld by the Chief City Magistrate remains intact and that is enough for our purpose . What sentence thereafter he should have passed is a matter with which Rule 14 does not concern itself. Rule 14 merely states that a person can be removed or dismissed or any other order passed against him on the basis of his conviction . That he was convicted by the trial Court which conviction was upheld by the appellate Court cannot be in

doubt. In view of that position , the Department was right in relying upon Rule 14 of the Railway Rules and removing the petitioner from service .

19. For the reasons aforesaid, the writ petition fails and is dismissed with costs. Advocate's fee Rs. 100.

20. Petition dismissed.