
(1970) 07 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 2467 of 1970

Nissar Ahmed

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 10-07-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 311 (2)
Criminal Procedure Code, 1898 (CrPC) — Section 207 A (6)
Penal Code, 1860 (IPC) — Section 342, 376

Citation : (1970) 2 LLJ 460 : (1970) 2 MysLJ 199

Hon'ble Judges : Noronha, J; Chandrashekhar, J

Bench : Division Bench

Judgement

Chandrasekhar, J.—The petitioner was an Assistant Surgeon, Grade III, in the Mysore State Medical Service. By the Government Order dated 4-9-1969 (marked Ext. E) he was dismissed from service on the ground of misconduct. In this petition under Art. 226 of the Constitution, he has assailed that order of dismissal.

2. The police placed a charge-sheet against the petitioner for offences punishable under Ss. 376 and 342 I.P.C., alleged to have been committed by him in respect of a woman patient when he was in charge of the X-Ray section of the General Hospital at Tumkur. The First Class Magistrate, Tumkur, discharged him under S. 207-A (6), Cr. P.C. Thereafter the Government order disciplinary proceeding against him and appointed the Director of Vigilance, the State Vigilance Commission, to be the Specially Empowered Authority to conduct an enquiry against him. The Specially Empowered Authority framed the following charge :

"You, Dr. Nissar Ahmed, while functioning as Assistant Surgeon in charge of the X-Ray Department in the General Hospital, Tumkur, between 19-11-1964 and 12-12-1965 were guilty of gross misconduct in that you, on 18-12-1965 at about 12.30 p.m., took one Smt. Chennamma, wife of Shri K. M. Putalingaiah, Madhugiri Taluk, an in-patient in the hospital, from her ward to the screening

room and detained her for purposes of unprofessional conduct and acted towards her in a manner unbecoming of your profession by molesting her".

3. The petitioner filed a written statement denying the allegations against him and asked for an oral enquiry. 17 witnesses were examined in support of the charge and he examined 2 witnesses in his defence. The Specially Empowered Authority disbelieved the evidence of the defence witnesses and held that the charge against the petitioner had been established. The Government issued him a show cause notice (Ext. C) under Art. 311(2) of the Constitution proposing the punishment of dismissal from service. After considering the cause shown by him, the Government made the impugned order dismissing him from service.

4. In this petition Mr. N. Mohandas Hegde, learned Counsel for the petitioner, assailed the proceedings before the Specially Empowered Authority and his findings, on the following grounds :

(i) The attendance register of the hospital was not produced by the authorities though the petitioner specifically asked for its production;

(ii) The Specially Empowered Authority relied on the statement of Dr. Ganesh though he was not made available for cross-examination;

(iii) The Specially empowered Authority relied on the statements of deceased Chennamma (who was alleged to have been molested by the petitioner) and deceased Sakamma and their statements were inadmissible in evidence; and

(iv) Disciplinary proceeding could not be taken against the petitioner as he had been discharged by the Magistrate under S. 207-A(6), Cr.P.C.

5. The petitioner had asked for the production of the attendance register of the hospital to show that C.W.2, Dr. Subhadra, was on leave on the date of the alleged incident. Thereby he wanted an inference to be drawn that she was not present in the hospital on that day and that her evidence as to the occurrence was not worthy of belief. Even if her evidence and the statements of Dr. Ganesh and deceased Chennamma and Sakamma are totally excluded, it will be seen presently that there is conclusive evidence to establish the charge. Hence, it is unnecessary, in our opinion, to examine the first three contentions of Mr. Mohandas Hedge.

6. The evidence of C.W. 14 Muddamma, the mother of deceased Chennamma, is briefly as follows :

* * * Even if the evidence of C.W. 14 Muddamma stands by itself, we think the only conclusion which anyone can reasonably reach would be that the charge against the petitioner is proved.

However, Mr. Mohandas Hegde contended that we are not dealing with this matter as an appellate court, that it is not open to us in a writ petition to re-assess the evidence, that what we have to consider is whether the proceeding of the Specially Empowered Authority are vitiated by any illegality, irregularity or

violation of natural justice, and that if we find there is any such illegality, irregularity or violation, we should set aside the finding of the Specially Empowered Authority and the punishment based thereon.

7. We cannot subscribe to such a narrow and technical view of the discretionary jurisdiction of this Court under Art. 226 of the Constitution. It is true that in a certiorari proceeding, this Court, while dealing with a quasi-judicial order, will not ordinarily reassess the evidence on which the conclusion in that order is rested. But it does not follow that if a part of such evidence is inadmissible or is otherwise vitiated this Court should quash such order even if the remaining portion of the evidence is unassailable and is so telling that no other conclusion is reasonably possible on such portion of the evidence, taken by itself. In such a case no purpose will be served by quashing the order and allowing the Tribunal to decide the matter afresh after excluding such inadmissible or vitiated portions of the evidence.

8. Lastly, it was feebly contended by Mr. Mohandas Hegde that as the petitioner was discharged by the Magistrate under S. 207-A(6), Cr.P.C., he could not be subjected to a departmental enquiry on a charge based on the same allegations as in the criminal prosecution. As rightly held by the Specially Empowered Authority, this contention has no force in view of the pronouncement of the Supreme Court in State of Andhra Pradesh Vs. Sree Rama Rao,

9. We see no good grounds to admit this petition and we dismiss it.