
(2015) 09 JH CK 0112

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1462 of 2011

Prakash Poddar

APPELLANT

Vs

Steel Authority of India Limited and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2015) 4 AJR 829 : (2015) 4 JLJR 452

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : M.B. Lal and Sudarshan Shrivastava, for the Appellant; Rajiv Ranjan and Shresth Gautam, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J—Heard counsel for the parties.

2. Petitioner has been imposed with punishment of reduction to the minimum of the Grade i.e. existing grade S-9 Rs. 11,400/- 3% - Rs. 19,350/- to Rs. 11,400/- with immediate effect by the impugned order dated 30.09.2010 (Annexure-5) passed by the Deputy General manager (Mech-CRM). This punishment order is passed as a result of finding of guilt arrived at in respect of theft of property of the company namely, binding wire with contact set of Siemens make alleged to have been stolen by him on 16.01.2006 and seized at around 16.40 hrs by the personnel of Central Industrial Security Force red-handed from the petitioner. Annexure-1 is the charge sheet dated 14.03.2006. Petitioner also faced criminal prosecution arising out of the same allegation of theft and possession of stolen property under sections 379 and 411 of the Indian Penal Code before the Court of learned Judicial Magistrate, 1st Class, Bokaro in G.R. No. 63/2006. Learned Trial Court acquitted him of the charges of theft under section 379 of the Indian Penal Code but found him guilty under section 411 of the Indian Penal Code of possession of stolen property. In Criminal Appeal No. 52/2008 preferred by the petitioner, learned Additional Sessions Judge, Fast Track Court No. II, Bokaro

vide judgment dated 16.11.2009, acquitted him of the remaining charges under section 411 of the Indian Penal Code as well.

3. Petitioner has challenged the impugned order on the ground that for the same set of allegations with the same material evidence and prosecution witnesses when the criminal trial has ended in his acquittal, the departmental proceeding in prosecution of the same charge and by the same witnesses, have erroneously held him guilty and inflicted him with the impugned punishment.

4. It is urged that when the Prosecution Witnesses i.e. PW-1 Sanjeev Kumar Choudhary, PW-2 Subhash Chandra Bhuiyan, PW-3 Sacchidanand Palai who were intricately involved in the process of alleged seizure of the property and PW-4 Rajniti Singh being the witness to the property certificate of the employer BSL, have failed to establish the charges despite adequate opportunity before the Trial Court, statements of such witnesses taken in the departmental inquiry, could not be made the sole basis for establishing the charge of theft when other corroborative evidences are lacking to substantiate the said charges. It is urged that if that be so, the ratio laid down by the Hon"ble Supreme Court in the case of G.M. Tank Vs. State of Gujarat and Another, AIR 2006 SC 2129 : (2006) 3 CTC 494 : (2006) 11 JT 36 : (2006) 3 LLJ 1075 : (2006) 5 SCALE 582 : (2006) 5 SCC 446 : (2006) SCC(L&S) 1121 : (2006) 3 SCR 253 Supp : (2006) 3 SLJ 312 : (2006) AIRSCW 2709 : (2006) 4 Supreme 740 squarely applies to the facts of the present case which deals with the exoneration of the petitioner in the departmental proceeding as well on an acquittal in a criminal case of same charges with same set of evidence.

5. Learned counsel for the respondents has laboured to bring home the point that a departmental proceeding even in respect of the charges which gives rise to a criminal prosecution, can be independently conducted and finding of guilt can be arrived at on the standard of proof of preponderance of probability followed in a departmental proceeding. It is submitted that the criminal case ended in acquittal of the petitioner only on the ground that both the Trial Court and the Appellate Court did not find the factum of seizure of the property from the motorcycle of the petitioner duly established, though the personnel who were involved in the seizure namely, Subhash Chandra Bhuiyan and Sanjeev Kumar Choudhary duly supported the prosecution case. It is urged that in the departmental proceeding, these allegations have been duly substantiated in the deposition of the aforesaid witnesses and there is no reason why the charge of theft of property upon the petitioner be disbelieved as he did not have anything to dislodge the credibility of such witnesses. Learned counsel has relied upon the judgments rendered by the Hon"ble Supreme Court in the case of The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, (2011) 13 JT 247 : (2012) 1 LLJ 320 : (2012) LLR 8 : (2011) 13 SCALE 33 : (2012) 1 SCC 442 : (2012) 1 SLJ 155 and in the case of The Deputy Inspector General of Police and Another Vs. S. Samuthiram, AIR 2013 SC 14 : (2013) 1 CTC 931 : (2013) 136 FLR 99 : (2013) LabIC 446 : (2013) 1 RCR(Criminal) 329 : (2012) 11 SCALE 420 : (2013) 1 SCC

598 in support of the aforesaid submissions. It is submitted that even in a case of Honourable acquittal, the Disciplinary Authority is well within his rights to proceed departmentally as the standard of proof is different and based upon the preponderance of probability to be established in the individual facts of the case.

6. I have considered the rival submissions of the parties and perused the relevant materials on record. It is to be observed at the outset that the departmental proceeding as well as criminal prosecution proceeded against the petitioner on the same allegations of theft of company property. In the criminal prosecution, of course petitioner was also alleged to be in possession of the stolen property. Witnesses who were examined in the departmental proceeding and in the criminal prosecution were also the same except the Investigating Officer who also deposed in the criminal case. CISF personnel namely, Subhash Chandra Bhuiyan and Sanjeev Kumar Choudhary who were instrumental in the process of seizing the alleged goods from the tool box/dicky of the motorcycle of the petitioner, had sought to substantiate the allegation during the trial also stating that the seizure list was prepared later on by the Investigating Officer in the presence of PW3-Sacchidanand Palai. It further transpires that the statement of CISF personnel who were alleged to be involved in the process of seizing of the stolen property, were not corroborated by any independent witness even during the criminal prosecution or during the departmental inquiry. Criminal prosecution failed as the very seizure of the property could not be established, nor the seized materials were produced before the Court to be proved. There was lacunae in the timing also in the seizure of the property as evidenced in the contradictory statements of PW2-Subhash Chandra Bhuiyan and the informant (PW3) Sacchidanand Palai. Even in a departmental proceeding, serious charges which could also give rise to criminal prosecution in ordinary circumstances, are required to be proved with a more serious burden of proof upon the prosecution as it carries not only slur upon the reputation of the petitioner, but also liability of criminal prosecution as well. [See Union of India (UOI) and Others Vs. Gyan Chand Chattar, (2009) 122 FLR 684 : (2009) 8 JT 473 : (2009) 8 SCALE 575 : (2009) 12 SCC 785 : (2010) 1 SCC(L&S) 129 : (2009) 11 SCR 124 : (2009) 3 SLJ 421 : (2009) 5 SLR 214] thereof is quoted hereunder:

21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities.

7. In the departmental proceeding except the statements of witnesses Subhash Chandra Bhuiyan, Sanjeev Kumar Choudhary and Sacchidanand Palai, no other corroborative evidence was produced by the prosecution to establish the factum of theft of the alleged property by the petitioner. The more glaring fact which was noticed during the criminal trial was the statement of PW-2 Subhash Chandra

Bhuiyan that he had also seized six silver pieces from the same tool box of the motorcycle of the petitioner which did not find any mention in the seizure list prepared by the Investigating Officer after the seized goods along with the copper wire and contract set of goods were allegedly handed over to Sacchidanand Palai, ASI, CISF i.e. the informant who was entrusted with the duty of checking of vehicle at the particular gate of the company during the said period. There is no mention of these six silver pieces by the said witness Subhash Chandra Bhuiyan when he deposed in the departmental inquiry. If there is such a serious discrepancy even in the statements of fact by an important witness who was the person involved in the seizure, it cannot be said that the burden of proof required to establish a serious charge of theft upon a delinquent employee, stood discharged by the prosecution in the departmental proceeding either. As also transpires, even in the departmental proceeding, apart from the property certificate produced by Rajniti Singh (PW4), AGM (ETB), BSL, which did not conclusively show any evidence of stealing of the property from any particular office or the company, no other materials were shown that the alleged property was stolen from the company by the petitioner. Rather, in the criminal case, he had deposed that such copper wire, etc alleged to be part of the seizure property, could also be found in the open market. In the wake of such unconvincing testimony of the witnesses and even on the standard of proof in a departmental proceeding on preponderance of probability, the charges do not get established. The inference of guilt arrived at by the Enquiry Officer can be said to be perverse.

8. From reading of the judgment in the case of M.G. Vittal Rao (Supra), relied upon by the respondent as well, specifically para-23 thereof, it is evident that the Hon"ble Supreme Court after enunciating the proposition of law on the aforesaid issue, also observed that such determination would be dependent upon the facts of the individual case as well. In the facts of the present case, it is seen that criminal trial was also prosecuted on the same set of facts and evidence. Para-23 of the aforesaid judgment is quoted hereunder:

"23. In Pandiyan Roadways Corpn. Ltd. v. N. Balakrishnan, this Court reconsidered the issue taking into account all earlier judgments and observed as under: (SCC pp. 766-67, paras 21-22)

"21. There are evidently two lines of decisions of this Court operating in the field. One being the cases which would come within the purview of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and G.M. Tank v. State of Gujarat. However, the second line of decisions show that an honourable acquittal in the criminal case itself may not be held to be determinative in respect of order of punishment meted out to the delinquent officer, inter alia, when: (i) the order of acquittal has not been passed on the same set of facts or same set of evidence; (ii) the effect of difference in the standard of proof in a criminal trial and disciplinary proceeding has not been considered (see Commr. of Police v. Narender Singh, or; where the delinquent officer was charged with something more than the subject-

matter of the criminal case and/or covered by a decision of the civil court (see G.M. Tank, Jasbir Singh v. Punjab & Sind Bank and Noida Entrepreneurs Assn. v. Noida, SCC at p. 394, para 16).

22. ... "41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points out that the same would depend upon other factors as well. (See e.g. Krishnakali Tea Estate and RBI v. S. Mani. Each case is, therefore, required to be considered on its own facts."

9. Therefore, this Court is also of the considered view that the charge of theft were not established in the departmental proceeding also warranting imposition of impugned punishment. The order of punishment also does not reflect adequate application of mind over the attendant state of facts and legal issues involved in the matter when the Disciplinary Authority was conscious that the petitioner had been acquitted in the criminal case as well. The impugned order therefore cannot be upheld in the eye of law as well as on facts and it is accordingly quashed.

10. Writ petition is allowed.