

(2013) 05 DEL CK 0500

In the Delhi High Court

Case No : Writ Petition (C) 4225 and 6234 of 2012

Shri Devender

APPELLANT

Vs

Govt. of NCTD and Another
 Pappu Ram Meena Vs
Commissioner of Police and Another

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 148, 149, 307, 392, 397

Citation : (2013) 05 DEL CK 0500

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sachin Chauhan, for the Appellant; Zeyanl Haque, Advocate for Mr. Shariq Mohammad, Advocate in W.P. (C) 4225/2012 and Mr. Satvik Verma, Advocate in W.P. (C) 6234/2012, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Long many years ago, in the year 1996, deciding an issue as to when should a person who is convicted for committing an offence be denied public employment, in the opinion reported as Pawan Kumar Vs. State of Haryana and another, the Supreme Court had opined that only conviction for such offences which involve a moral turpitude should result in denying public employment. Notwithstanding the said categorical enunciation of the law, with regret, we note that for 17 long years the officers of Delhi Police have refused to abide by the law resulting in hundreds of cases being decided by the Delhi High Court each year on the subject. In the opinion reported as Govt of NCT of Delhi and Another Vs. Robin Singh, the Division Bench of this Court noted that the archaic method of character verification was being resorted to by the Delhi Police even in the 21st century. The same was by checking on the police dossiers. The Division Bench had noted how countries abroad had marched ahead with time, taking help of psychological tests evolved by Psychologists. With respect to

employment in Police, the Division Bench had highlighted that apart from physical strength and fitness, emotional maturity and ability to remain calm in emotionally charged situations as also good moral character and integrity and lastly ability to handle difficult situations need to be tested for those who seek employment in the police force. It was regretted that the Delhi Police continues to sleep.

2. We are witnessing virtually every week the inability of Police Officers to handle emotionally charged situations. Male Police Officers slapping innocent female protestors; a lady being molested on the street in front of the eyes of her father, when seen to be protesting: and naturally the protest would be hysterical, is met by a violent response from the male police officers who are seen assaulting the lady. These are not nasal beep beeps. They are symptoms of a deep malaise. The only cure is for the police force to disband the archaic recruitment processes and resort to scientific evaluation of the emotional character of a person.

3. With reference to offences being broadly classified as misdemeanors and felonies; the latter being treated as grave vis-?-vis former, in Robin Singh's case, the Division Bench had opined that the police personnel can take further help from the Penal Code and the Criminal Procedure Code whereunder offences, with reference to the gravity thereof, are classified as cognizable vis-?-vis non-cognizable and bailable vis-?-vis non-bailable. The reason was that the decision of the Supreme Court in Pawan Kumar's case (supra) had noted an OM dated February 02, 1973 issued by the Government of Haryana which was based upon a report prepared pursuant to "All India Seminar on Correctional Service" held at New Delhi in March 1969, bringing out how isolation of members of the society breeds criminality and the need to integrate people in the society who have committed non-serious wrongs by not denying public employment. A decision of the Supreme Court reported Commr. of Police and Others Vs. Sandeep Kumar, brings out the importance of overlooking indiscreet acts by the youth and not to label a poor man, who in hunger, steals a loaf of bread as a thief for all his life.

4. The decision in Robin Singh's case also clarifies the law that mere acquittal at a criminal trial would not require it to be treated that the antecedents of the person are good for the reason an acquittal at a criminal trial would only mean that the prosecution could not muster sufficient evidence to bring home the guilt. The decision of the Supreme Court reported as Management, Pandiyan Roadways Corp. Ltd. Vs. N. Balakrishnan, and especially the observations in para 21 and 22 thereof would bring out that unless the acquittal is honourable, fact of acquittal, though relevant would not be conclusive of the innocence.

5. In today's environment where witnesses are being suborned; may be due to terror or being purchased over for consideration and acquittals at the criminal trials being the norm and the convictions the exception, Courts have to be careful because to induct a person with a criminal background in public service would cause incalculable harm to public interest and public good.

6. What would be the way forward?

7. In a recent decision pronounced on April 29, 2013 disposing of W.P. (C) No. 4052/2012 Commissioner of Police Vs. Mukesh Kumar, this very Bench, in para 23 of the opinion had guided as under:-

23. While considering the nature of acquittal, it would not be enough to simply observe that the witnesses had turned hostile and therefore it would be presumed that the accused had created a terror twice over; firstly when the offending act constituting the crime was committed and secondly when the witnesses were suborned. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal and in particular whether it is on a benefit of doubt. Insofar as the nature of offence is concerned, the facts disclosed in the FIR supported with other material have to be considered. The gravity of the acts alleged the narration of the facts in the FIR and medical evidence has to be considered. Witnesses may not depose in tune with their statements made before the police and thus it would have to be looked into as to whether it was a case where the Investigation Officer did not seek full and complete version from the witness. It being settled law that while appreciating the deposition of witnesses, vis-?-vis their statements made before the police, on the issue of variation and improvements it has to be kept in mind that many a times a person informs facts which he thinks are relevant and ignores to tell facts which he thinks are irrelevant, but in law the relevance or irrelevance may be in converse and hence the duty of he who seeks information to elicit all relevant information.

8. Since this Bench had come across a very illustrative applicability of the law to the facts; as to what analytical approach is required, in Mukesh Kumar's case (supra), this very Division Bench had noted and thereafter quoted from a decision dated July 23, 2008, disposing of OA No. 178/2008, by a Division Bench of the Tribunal as under:-

We are surprised, rather distressed that even though it has been ordained authoritatively by judicial pronouncement that the nature of offence and the manner of acquittal has to be examined properly, the respondents appear to have ignored both. Denial of appointment to a citizen for all times to come is indeed a serious matter. The same cannot be dealt with so lightly so as not even to consider the attending circumstances leading to commission of crime, nature of offence that may appear from the contents of the first information report, statements of witnesses and the medical evidence. While considering the manner of acquittal, it may not be enough to simply observe that the witnesses had turned hostile, and by simply so observing, to deny appointment to a citizen. The judgment of the criminal court has to be taken into consideration with all the aspects leading to acquittal. The manner of acquittal, and in particular, as to whether the same is a clean acquittal or acquittal on benefit of doubt, has also to be taken into consideration. To elaborate, insofar as, the nature of offence is concerned, we may mention that some times the facts disclosed in the FIR

supported with other material, even if taken to be gospel truth, may not constitute an offence under which an FIR is registered, challan presented and the accused tried. In a case of acquittal, where witnesses have not deposed in tune with the statements made by them before the police, the finding of acquittal is recorded without going into any other aspect of the case. If thus in a given case, the offence with which an accused is charged and tried, may not at all be gone into, his plea that the offence with which he was charged was not made out at all even from reading of the FIR and attending circumstances, has to be gone into at some stage. Making a mention of the offence with which a person might have been charged and put to trial is no way to determine the nature of offence. We are of the considered view that nature of offence is not exclusively determinable only on the label or sections on which an FIR may be registered. With a view to find gravity of offence for which a person may have faced criminal trial, the narration of facts in the FIR, supporting material and the medical evidence is required to be taken into consideration. Insofar as, the manner of acquittal is concerned, once again, the judgment of the criminal court has to be carefully gone into. In a given case, the witnesses may not have deposed in tune with their statements made before the police, but they may not have been declared hostile and cross-examined by public prosecutor. Such a situation arises when the prosecution witnesses may support the prosecution version to some extent and the public prosecutor may think that to the extent they have supported prosecution version, the finding of conviction can yet to be recorded. He may thus not declare the witnesses to be hostile nor thus cross-examine them. In ultimate analysis, as to whether the accused has been acquitted by giving benefit of doubt or it is a case of clean acquittal, has also to be seen.

(Emphasis Supplied)

9. Our regret is that the senior officers of the Delhi Police are refusing to discharge their duties. They simply mechanically keep on recording that the prospective candidate who was seeking employment in Delhi Police was charged for a heinous offence. The officers just do not look into the nature of the acquittal; the FIR, material gathered in evidence, statements of witnesses recorded u/s 161 Cr.P.C., the MLCs of the injured or the post-mortem reports in case death results. Regretfully, except a solitary bench of the Tribunal which used to correctly appreciate the facts with reference to the law, all other benches of the Tribunal are resorting to short cuts. The result is a docket explosion in this Court for the reason this Court has to, on case to case basis, appreciate the nature of the acquittal in light of the attendant circumstances as explained in para 23 of the decision in Mukesh Kumar's case and as also explained by the Tribunal in its decision dated July 23, 2008 disposing of OA No. 178/2008.

10. A cursory look at the reported case law pertaining to offences in rural areas would throw light on the fact that the judiciary in India has been compelled to take judicial notice of the fact that it is a common practice to ensnare all members of a family should one or may be two members thereof indulge in an

act which is a penal offence, not hundreds but thousands of judgments have cautioned Trial Court Judges to be careful while appreciating the testimony of witnesses when large number of members of a family are named as accused; obviously to rule out false implication. Though not running in thousands in number, hundreds of decisions can be easily located where false implication by the police is writ large. Should a person who is accused in such kind of cases and earns an honourable acquittal be denied public employment, whatsoever heinous be the offence alleged? The answer has to be a "No". For the reason it is not the offence but the offender which has to be in the focus.

11. With the aforesaid legal position we proceed to note the facts of W.P. (C) No. 4225/2012.

12. The petitioner Devender and his friends Dharambir, Niranjana and Ravinder were accused for having committed offences punishable under Sections 392/397/398/401 IPC read with Section 25 of the Arms Act. Vide decision dated August 13, 2009 all of them were acquitted.

13. The decision pronounced by the learned Additional Sessions Judge Rohtak would ex-facie evidence that all four accused were framed. Not only for the reason not a single public witness was associated during the investigation and for the recoveries effected, the learned Judge found serious infirmities and deficiencies in the deposition of the witnesses of the prosecution, who were all police officers. The learned Sessions Judge, in paragraph 25 of his opinion, noted a serious discrepancy of the place wherein the four accused were apprehended allegedly armed with deadly weapons to commit either robbery or dacoity. As per the prosecution, a secret informer had informed a patrolling party comprising ASI Dilbagh Singh, HC Samunder Singh, HC Rajesh Kumar, HC Ashok Kumar and Const. Jagbir Singh that four-five boys, armed with hockey, rods and a country made pistol were planning armed robberies/dacoity at a park near a field. It was night time. The rukka on basis whereof the FIR was registered, containing the names of the accused and the weapons seized, was statily prepared at the spot itself, which was stated to be a park near a field. Some police officers spoke that the area was lit and some categorically stated that the area was dark. Some deposed that the rukka was prepared by putting the paper on the bonnet of the gypsy and some spoke of the same being prepared at the spot using a wooden writing pad as the base. With respect to the daily diary register maintained at the local police station there were serious discrepancies as to who was on patrolling duty. The learned Judge found it surprising that HC Samunder Singh acted as a decoy pedestrian and the other police officers hid themselves and that the accused snatched Rs. 100/- from HC Samunder Singh before they were apprehended. The decision would bring out a case of false implication.

14. Finding himself selected to be appointed as a constable and given appointment, a show cause notice was issued to Devender alleging that since offence punishable u/s 398 IPC is serious he should show cause why his service should not be discontinued. His response brought out, as noted above, he being

falsely implicated, but acting mechanically the police officers concerned i.e. the Screening Committee recommended his candidature to be cancelled. The only reason given is that Devender was accused of a serious offence.

15. Regretfully, even the Tribunal has acted mechanically without any application of mind. Both, the Screening Committee and the Tribunal have been influenced by the allegations constituting the charge sheet against Devender and have ignored the decision of acquittal in favour of Devender. Both i.e. the Screening Committee and the Tribunal has overlooked the fact that Devender did not earn an acquittal on the witnesses turning hostile. The Screening Committee and the Tribunal did not even bother to read the decision of the learned Court of Sessions, and had they done so, as we have done, a false implication of Devender by the local police would have stared them in the face.

16. Thus, W.P. (C) No. 4225/2012 has to be allowed and the order dated March 22, 2011 cancelling his selection as a Constable in Delhi Police has to be quashed with further directions which we would be passing.

17. In W.P. (C) No. 6234/2012, as regards the petitioner Pappu Ram Meena, we find that he was an accused for having committed offences punishable u/s 148/149/307/447 IPC. He along with other co-accused were acquitted probably as a result of a compromise and the witnesses turning hostile.

18. Since we do not have the benefit of the decision by the Court of Sessions in which Pappu Ram Meena was acquitted, it would be difficult for us to analyse any further as we have done in Devender's case, but would highlight the necessity of the matter to be re-examined by the Screening Committee in a proper way. We note that vide impugned decision dated May 17, 2012 passed by the Tribunal the matter has been remanded to the Screening Committee to obtain relevant material i.e. the FIR, material gathered by the Investigating Officer, statements of witnesses recorded at the trial etc. for the reason being selected as a constable in Delhi Police, Pappu Ram Meena was held disentitled for the job because of he being an accused for offences aforementioned. We find that during the pendency of the writ petition on July 23, 2012 the Screening Committee has once again parroted its earlier order by highlighting the allegations against Pappu Ram Meena in the FIR. The job of the Screening Committee is to evaluate the material as indicated in paragraph 23 of the opinion in Mukesh Kumar's case as also as was indicated by the Tribunal in its decision dated July 23, 2008 disposing of OA No. 178/2008.

19. Since the decision of the Tribunal in Pappu Ram Meena's case warrants the matter to be reconsidered and notwithstanding that the Screening Committee has re-considered the same and passed an order on July 23, 2012, which we find to be an eye wash, we dispose of W.P. (C) No. 6234/2012 affirming the remand direction issued by the Tribunal and simultaneously quash the order dated July 23, 2012. We direct the Screening Committee to collect all relevant material and take a reasoned decision; not a mechanical decision guided by the law declared

and applied to the facts in Mukesh Kumar's case (supra). Needful would be done within 12 weeks.

20. W.P. (C) No. 4225/2012 is allowed as prayed for in the writ petition except that Devender would not be paid back wages till today. He be taken back in service forthwith. Benefit of all consequential benefits including his seniority, notional increments and continuous service be accorded to him, but no back wages. Parties shall bear their own costs in both the writ petitions.