

(2001) 09 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No's. 7932 and 9338 of 2001

State of Karnataka and Others

APPELLANT

Vs

K. Madhava and Another

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Constitution of India, 1950 — Article 20

Citation : (2002) 4 KarLJ 188 : (2002) 1 KCCR 26

Hon'ble Judges : M.F. Saldanha, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : B. Manohar, Additional Government Advocate, for the Appellant; Mahesh S., for R.B. Deshpande, for Respondent-1 and Respondent-2 served, for the Respondent

Judgement

M.F. Saldanha, J.—We have heard the learned Government Advocate as also the learned Advocate who represents the two respondents. This is a case in which the two respondents who were the members of the police force had faced a disciplinary proceeding on the basis of certain allegations that were levelled against them. We refrain from going into the details and the finer points of the case because the enquiry ended in an adverse order whereby the disciplinary authority took the view that the respondents are liable to be dismissed from service. The respondents filed appeals as they were entitled to and the Appellate Authority set aside the punishment, recorded the finding that there were several lacunae in the proceedings and therefore remanded the case for a de novo enquiry from the stage of the charge. The respondents thereafter approached the Karnataka Administrative Tribunal and assailed the appellate order principally on the ground that the Appellate Authority having set aside the Disciplinary Authority's order imposing punishment that there was no warrant for the direction to hold a de novo enquiry. Several other submissions were also canvassed and the KAT upheld the argument that the holding of a de novo enquiry would constitute an infringement of the doctrine of double jeopardy. To amplify, the Tribunal took the view that the respondents had already been served

with a charge-sheet, that they had faced a full-fledged enquiry and that the Appellate Authority had set aside the adverse order that had resulted against them and the view canvassed was that in this background the holding of a second enquiry would tantamount to putting the respondents on trial for a second time on the same set of charges. It is true that the principle of double jeopardy which emanates from the doctrine *autrefois "acquit"* envisages that no accused person can be put on trial for the same offence for the second time and this guarantee is also enshrined in Article 20 of the Constitution. The real question is as to whether there is an infringement of that principle and secondly, as to whether that doctrine will hold good as far as the departmental enquiry is concerned. As far as the second aspect of the legal position is concerned we do not dispute the fact that the principles analogous to the doctrine of double jeopardy would certainly apply to a disciplinary proceeding but as far as the first aspect, viz., the question as to whether on the set of the present facts a bar can be pleaded, we need to record that the submission canvassed before us is fallacious. The clear reason for this is because the law envisages that the previous order that has been passed, be it an order of acquittal or an order of conviction, has first assumed finality. That is condition precedent and that is the *sine qua non* for a bar to exist as far as the second trial on the same set of facts or same charges is concerned. The argument totally overlooks the fact that in a small category of cases where a trial has gone on default or where there are inherent defects in a trial that an Appeal Court is invested with the power of setting aside the earlier order irrespective of whether it is one of acquittal or conviction and of directing a retrial. A retrial is not a second trial and a retrial commences with a clean slate insofar as the earlier order has not assumed finality but ceases to exist because it has been set aside. It is necessary for us to amplify the clear position in law for purposes of dealing with the line of reasoning which found favour with the KAT. The learned Government Advocate is therefore fully justified when he points out that the decision of the KAT was erroneous in law insofar as once the Appellate Authority had set aside the adverse order, if there was justification for directing a *de novo* enquiry that the rules clearly contemplate that such power is invested in the Appellate Authority. We need to clarify here that it is not in every case that such a procedure is followed as there may be numerous instances where an Appellate Authority is satisfied that the adverse order is unsustainable that the Appellate Authority may set aside that order and leave the case at that. It is only where the Appellate Authority is satisfied that a *de novo* enquiry is justified that the discretionary power is invoked.

2. The respondents' learned Advocate raised a preliminary objection insofar as he pointed out that there has been a delay of approximately 4 years between the point of time when the KAT passed the order and the point of time when the petitioners, who are the department and the State, have approached this Court by way of these petitions. His submission is that a writ petition is essentially an expeditious remedy and that it is well-settled law that if the petitioner

approaches the Court after an abnormally long period of time has elapsed that the Court will refuse to entertain the petition. This is not an inflexible rule because the essential criterion is the overwhelming interests of justice and the classic illustration which we propose to cite is precisely what happens before the Court day in and day out wherein the petitioners point out valid reasons for very gross delay even where the provisions of the Limitation Act apply and where the Court is satisfied that the interests of justice would be jeopardized by refusing to condone the delay or entertain the petition, and the Court invariably entertains the petition in order to further the ends of justice. In a given instance therefore, the Court embarks upon the evaluation process and exercises the discretion as to whether to entertain the petition or not. That discretion has already been exercised by the Division Bench at first when these petitions were taken up for admission and even though there is no speaking order which is unnecessary, since the petitions were entertained and expedited it is clear to us that the Division Bench was of the view that it is a case involving issues of some seriousness which requires adjudication by the High Court and that therefore, the technical bar of delay would not be held against the petitioners. At this stage when the petition has come up for final hearing and more so since we consider that the case involves a substantial point of law we are not inclined to uphold the objection that has been canvassed.

3. The respondents' learned Advocate did vehemently submit that the purpose of remand is not to fill up any gaps or lacunae and if this were to be permitted, that it would lead to an unhealthy state of affairs insofar as the various shortfalls or shortcomings or loopholes would even be totally plugged up and that the respondents would be at an unfair advantage. We are not inclined to accept this argument because the apprehension itself is unjustified insofar as the respondents are at a distinct advantage insofar as the record of the earlier proceedings which include the depositions and cross-examination and the documents are all on record and if the department attempts to depart from them or contradicts them, the department shall do so at its own peril. If the department supplements the material or corrects those of the errors, the respondents still have their defenses open. We do not really see what is the real prejudice that would be caused to the respondents beyond the fact that they are required to face another round of departmental litigation. Undoubtedly, the respondents would have been prejudiced and in our considered view would have been entitled to make a legitimate grievance of this if they were continued under suspension. The KAT has revoked the suspension order and we are informed that the respondents have in fact been reinstated. We do not propose to interfere with the order because if at all there are lacunae or defects the department is responsible for this and not the respondents and again, if there have been long delays the petitioners/department is responsible for this and consequently the respondents cannot be made to suffer for what has happened. Under these circumstances, since the respondents have been reinstated we do not see how any prejudice of any type is caused to them if they are required to face the

departmental enquiry. Having carefully considered the law on the point, having examined the record, in our considered view, the order of the KAT is unsustainable and erroneous and is consequently set aside. The department shall ensure that the enquiry is held and concluded without any abnormal delay. The department shall also ensure that the principles pertaining to the holding of departmental enquiries are correctly and scrupulously followed and that no errors or lacunae as have taken place on the last occasion arise for the second time. These writ petitions accordingly succeed to this extent and stand disposed off. In the circumstances of the case, there shall be no order as to costs.

D.V. Shylendra Kumar, J.—I have had the benefit of listening to the order just now dictated by my learned Brother allowing the writ petitions and I am respectfully in agreement with that conclusion and the reasoning given in the said order.

2. However, having regard to the question of double jeopardy, the principle which was raised before the Tribunal which was accepted and which aspect was agitated before us earlier, I would like to add two points of my own. The Tribunal proceeded to allow the application of the respondents invoking the principles of double jeopardy. The Tribunal held as under:

"11. Fundamental principle that no one should be punished or put in peril twice for the same matter is applicable even to orders passed on departmental enquiries. Findings by the Appellate Authority reinstating the applicants is a quasi-judicial order and not liable to be varied at the will of the authority. No new charge has been framed against the applicants.

12. A second enquiry is not permissible in law on the identical allegations provided that the disciplinary authority after the first enquiry has decided the allegations on merits. Initiation of second enquiry on the same charge is not barred where the first enquiry was set aside on technical grounds that it was in violation of rules of natural justice. It is open to the departmental authorities to proceed departmentally in respect of a different charge although it may arise out of the same set of facts. In the instant case proper enquiry has been held and findings have been recorded. Not proper to hold again a second enquiry on the same charges, since Appellate Authority quashed the findings of the Disciplinary Authority on merits and it is not a case of quashing on technical ground where, in which cases second enquiry may be held on merits".

3. The concept of double jeopardy is enshrined in Article 20 of the Constitution. The concept having received constitutional status it could not have claimed any higher or better status in our estimation. The concept as we can see from Article 20, to my understanding, can only be confined to criminal proceedings, involving prosecution and punishments. The concept is not directly applicable to a departmental proceeding, which at the best can be equated to a quasi-judicial proceeding. The departmental proceedings are governed by the principles of natural justice in the absence of the rules governing the departmental

proceedings and the principles of natural justice supplement the rules to the extent they have not expressly been excluded. In a situation of this nature it is difficult to hold that the concept of double jeopardy is applicable to a departmental proceeding. The concept to the extent that it also involves the principles of natural justice alone can be invoked for the purpose of finding fault with the departmental proceedings, which can be done independently also. As such I am of the view that the Tribunal was in error in invoking the principles of double jeopardy for the purpose of invalidating the remand order of the Appellate Authority. It is a different aspect that in the instant case the concept of double jeopardy is wrongly invoked inasmuch as there is no second proceeding which was contemplated and which has been clarified in the order passed by my learned Brother. The remand order definitely will not involve the second trial. The Tribunal was clearly in error in invoking the principles of double jeopardy in respect of the departmental proceedings, which is essentially applicable in respect of criminal trials.