

(1984) 12 GUJ CK 0025
In the Gujarat High Court
Case No : Spl. C.A. 1285 of 1984

Thakore Chandrasingh Taktsingh

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-12-1984

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 3
Bombay Prohibition Act, 1949 — Section 66(1)
Constitution of India, 1950 — Article 14, 16, 226
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (1985) 2 GLR 701 : (1986) 1 LLJ 27

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

1. In this petition under Art. 226 of the Constitution, the petitioner who was the relevant time working as unarmed police constable, buckle No. 826 in the police establishment in Broach District has challenged the order passed by the D.S.P. Broach dismissing the petitioner from service on the ground that he had committed misconduct of eloping with a minor girl even though he was a married man and thus he had exhibited a conduct unbefitting a police personnel. The impugned order of dismissal which was passed after due enquiry is dated 26th July, 1982. It is at annexure "C" to the petition. The petitioner challenged that order by way of departmental proceedings in the hierarchy. The first appeal which was filed before the Dy. Inspector General of Police came to be dismissed on 30th September, 1982 and his further revision to the Inspector General of Police failed on 6th June, 1983. Thereafter the petitioner went in further revision before the State Government in the Home department. The said revision application came to be dismissed on 29th December, 1983. That order is at Annexure "E" to the petition. It is thereafter that the petitioner came to this Court, by way of present proceedings.

2. The petitioner had joined as unarmed police constable on 24th September, 1971. He was working at the relevant time in Broach district under the DSP

respondent No. 2 herein. On 17th February, 1979, he was involved in an incident in which he is alleged to have kidnapped a minor girl named Urmila, daughter of one Kanaiyalal Joshi, a resident of Jambusar. At that time the petitioner was working as unarmed police constable at Jambusar. He was alleged to have eloped with her. On these allegations, a criminal complaint was filed against the petitioner. He was ultimately charge sheeted for an offence under S. 363, I.P. Code and was committed to the Court of Sessions at Broach for trial. The charge against the petitioner in that criminal case was that on 17th February, 1979 at 5 a.m. the petitioner kidnapped the girl named Urmila, daughter of Kanaiyalal Joshi of Jambusar with an intention that she might be compelled to or might be seduced in illicit intercourse with him and thereby committed an offence under S. 366 of the I.P. Code and in the alternative, with the offence under S. 363, I.P.C. as Urmila was a minor below the age of 18 years at the relevant time. The petitioner removed her from the lawful custody of her father without his knowledge and without his consent. In view of the aforesaid criminal proceedings, the petitioner was suspended from service. The learned Additional Sessions Judge, Broach who decided the petitioner's Sessions Case No. 38 of 1979 took the view that the charge under S. 363, I.P.C. was not brought home to the petitioner for the reason that the prosecutrix Bai Urmila was a girl little less than 18 years of age and she appeared to have voluntarily walked out of the keeping of her guardian and she had voluntarily accompanied the petitioner on a joy ride. Thus, the petitioner could not be said to have committed any offence under S. 363, I.P.C. The order of the sessions court is at annexure "A" to the petition. It is dated 14th September, 1979. Thereafter suspension order issued against the petitioner pending the criminal proceedings was revoked and the petitioner was reinstated in service. Thereafter, on 22nd September, 1980, he was served with a charge sheet initiating departmental proceedings against the petitioner as he had eloped with a minor girl on 17th February, 1979 even though the petitioner was a married person and that he had kidnapped her. It was alleged that he had exhibited a conduct unbefitting a police personnel. A copy of the said charge sheet is at annexure "B" to the petition. Details in support of the charge sheet were also supplied to the petitioner and list of witnesses and documentary evidence were also supplied to the petitioner. Thereafter, departmental inquiry was held against petitioner and ultimately, the DSP, Broach by his order dated 26th July, 1982 held that misconduct was established against the petitioner and that he had exhibited a conduct which was not befitting a police servant. That the petitioner was a police employee. He was a married person and even though he was a married person he had eloped with a minor girl with consent or without consent and that he had acted in breach of law and had exhibited a grave misconduct. The DSP, therefore, ordered the petitioner to be dismissed from service.

3. Mr. Trivedi for the petitioner raised the following contentions in support of the petition :

1. The petitioner was acquitted of the charge under S. 363, I.P.C. Consequently,

no departmental proceedings can be held against him for the very same charge.

2. The petitioner had not committed any misconduct as per the provisions of the Bombay Police Act, 1951 or Rules and hence also, the order of dismissal was patently bad.

3. The order of dismissal passed against the petitioner and as confirmed by the higher authorities is violating the guarantee of Arts. 14 and 16 of the Constitution as another police constable similarly situated and who had committed similar misconduct was not dismissed from service after he was acquitted by the criminal court.

4. In any case, the punishment imposed is too harsh and the petitioner should have been leniently dealt with.

.....

4. So far as the first contention of Mr. Trivedi is concerned, it is now well settled that if a criminal court acquits a delinquent of any charge on evidence led before it, the departmental authorities cannot hold a departmental inquiry for the very same charge and cannot sit in appeal over the decision of the competent criminal court. Mr. Trivedi heavily relied upon a decision of this Court in the case of *Abdul Hakim v. Dist. Supdt of Police* 19 G.L.R. 210. In that case, the concerned petitioner was acquitted of the offence under S. 66(1) of the Bombay Prohibition Act. On the very same charge, departmental proceedings were sought to be held against the delinquent. This Court held that such a course was not open to the department as it would amount to sitting in appeal over the decision of the criminal court arrived at on evidence on the very same charge. In this connection, the following pertinent observations were made by M. P. Thakker, J. (as he then was) :

"The proposition that acquittal in a criminal court does not operate as an absolute bar in a departmental proceeding is now firmly entrenched and needs no reiteration. The heart of the problem, however, lies elsewhere. The proposition that on the same material and on re-appreciation of the same oral evidence, without anything more, it is open to a disciplinary authority to take just the contrary view to the judicial view taken by the Court of law and notwithstanding the order of acquittal to record a finding of guilt against a delinquent and to dismiss him from service, is an astounding proposition for if it were to be upheld, even the finding of acquittal rendered by the Supreme Court may be disregarded and a disciplinary authority may take the view that it is open to him to believe the evidence of witnesses not believed by the competent Court and to act on the same evidence and to hold a person guilty notwithstanding that the criminal court came to the conclusion that on the very same evidence the accused was entitled to acquittal. If this were accepted as true position of law, it would only undermine respect for the judicial administration. Nay it would even promote disrespect for the institution of law and justice. The true position of law would appear to lie within the hinterland between the two extremes. A

departmental proceeding cannot be entertained as a matter of course without anything more when the Court of law has acquitted the delinquent. It can be undertaken only if special circumstances are shown to exist - For instance - (1) The Court might have acquitted the accused on the ground of failure to obtain the requisite sanction or (2) the acquittal may be grounded on the circumstance that there was no sufficient evidence by reason of the fact that the prosecution witnesses had not remained present and the request made for adjournment to enable the prosecution to examine witnesses was not granted, (3) The charge was defective and trial was vitiated on account of prejudice occasioned to the accused. (4) When the case is that of circumstantial evidence and acquittal is rendered by extending benefit of doubt on the ground that the prosecution has failed to establish its case beyond reasonable doubt. (5) When some of the witnesses who implicate the accused are believed but others are not believed and in view of conflict of evidence acquittal is ordered on the doctrine of benefit of doubt.

The question of standard of proof or degree of proof in departmental as distinguished from criminal proceedings is irrelevant in the context of appreciation of oral evidence. There cannot be a different standard or criteria for assessing the credibility of a witness depending on the nature or forum of inquiry. Surely it is not suggested that uninspiring evidence which is considered unworthy of credence by a Court in a criminal case can be acted upon in a departmental proceeding. Veracity and credibility of a witness cannot depend on the nature or forum of a proceeding."

5. It must be noted at this stage that Thakkar, J. also placed reliance on a Government circular issued on 1st August, 1966 as reviewed and clarified by a letter circular dated 26th July, 1968 for arriving at the aforesaid decision. The following part of the circular dated 26th July, 1968 reproduced in para 3 of the aforesaid judgment is worth extracting at this stage :

"It is also permissible to hold a departmental enquiry after the acquittal, in respect of a charge which is not identical with or similar to the charge on the criminal cases, and is not based on any allegations which have been negated by the criminal court. Further more, if the allegations had not been examined by a Court of law, but considered good and sufficient for departmental/disciplinary action, there is no bar to taking such action and punishing the Government servant with any of the punishment mentioned in the Bombay Civil Services (Conduct, Discipline and Appeal) Rules. However, if the facts or allegations had given a finding that the allegations are not true, then the consequent acquittal by the Court should generally be respected, even though it is open to the competent authority to proceed against the Govt. servant departmental on the same charge and taking therein a different view from that taken by the Court."

6. Thakkar, J. in connection with the aforesaid circular has made the following observations in the very same para of the report :

"The mandate contained in the circulars cannot be disregarded with impunity. Before deciding to launch a departmental enquiry in the case of a Government servant who is acquitted by the criminal court, the competent authority is under an obligation to apply his mind to the requirements prescribed by the guidelines embodied in to circular and to decide whether it is a fit case for making a departure from the rule of respecting the verdict of the Court of law. It is only when the competent authority is impelled to the conclusion that it is a case for launching of a departmental enquiry notwithstanding the verdict of acquittal on the basis of the guidelines prescribed by the circular that it is open to him to do so. Not otherwise."

7. It must be kept in view that in the aforesaid decision, the concerned police constable was charged on an offence under S. 66(1)(b) of the Bombay Prohibition Act. On the very same allegations and on the very charge, there came to be issued a departmental charge sheet. It is in the facts of that case that this Court took the view that departmental proceedings were barred. So far as the facts of the present case are concerned, they are entirely different. The petitioner was charged before the criminal court under S. 363, I.P.C. The learned Additional Sessions Judge who considered the sessions case took the view that the petitioner had not kidnapped the minor girl who had practically reached the age of majority, but it was a case in which the prosecutrix herself voluntarily walked out and went with the petitioner presumably on a joy ride. The following observations of the learned Sessions Judge which are found in the order of acquittal at annexure "A" require to be reproduced at this stage :

"Now, therefore, I have to consider the evidence or record and decide whether the girl Bai Urmila had left the custody of her parents on her own free will without any allurements or promise from the accused and had thereafter persuaded the accused to go with her from one place to another and enjoyed life in her own way..... Now, her conduct of getting down from the ladder alongwith the accused speaks too eloquently that she has left the place of her father on her own free will. She would have shouted while getting down the ladder but she had not done so. Thereafter, according to her, she was taken to the bus stand of Jambusar and from there, to various places as stated above. She has stated that at all these places, the accused had sexual intercourse with her giving her threat. It is very surprising to note that at all these places, the prosecutrix Bai Urmila had enough opportunities to speak to the female folk who were present in the house where the act of sexual intercourse is alleged to have been committed by the accused with her. At Broach and at Vansada, she is alleged to have stayed in the family of the acquaintance of the accused and the sexual intercourse was alleged to have been committed with her by calling her while she was sleeping with other women folk in the house during the night..... All these circumstances clearly go to show that Bai Urmila had with consent sexual intercourse with the accused, if at all there was any such act between the accused and Bai Urmila. It is also very significant to note that she has travelled from place to place in S. T. bus where she had seen the police constable roaming

about the bus stand and yet she did not lodge any complaint against the accused before such police officers..... Moreover, she again met the accused where accused escaped from the police custody from Navsari and at his instance, she went to Katargam and stayed with the acquaintance of the accused and there also she did not lodge any complaint against the accused. Thus, looking to her conduct, throughout, the time she was with the accused. It must be said without any hesitation that she had decided to go with the accused of her free will and to have a free life with him. It also comes out from the evidence that the accused was known to Bai Urmila and one photograph was also found from the house of the accused. It also further comes out from the evidence that the accused was also in close intimacy with the members of the family of Bai Urmila. Under these circumstances, the say of the accused that Bai Urmila had come to him leaving the shelter of her parents deserves to be accepted. Urmila being a girl just on the border line of majority of the age of 18 years, it must be said that the accused was to certain extent justified in accepting her or being persuaded by her to go with her. There is no evidence to show that the accused had given her any allurements.... So, from all these circumstances, it must be said that the prosecution has failed to prove that the accused had enticed away Bai Urmila from the lawful guardianship of her father and had sexual intercourse with her, with or without her consent."

8. The petitioner was, therefore, acquitted of the offence under S. 363, I.P.C. The aforesaid reasoning of the learned Additional Sessions Judge clearly indicates that what the criminal court held in favour of the petitioner was that the prosecution had failed to establish that the petitioner had kidnapped Bai Urmila from out of lawful keeping of her guardian i.e. her father and that Bai Urmila had herself ran away with the petitioner and had free life with him. So far as the departmental proceedings are concerned, the charge against the petitioner proceeds on entirely a different footing. The charge against the petitioner in the departmental proceedings runs as under :

9. The petitioner had exhibited a conduct of unbecoming of a police personnel inasmuch as while he was working as police unarmed constable, even though he was married, he had kidnapped and had run away with a minor girl Urmila who was the daughter of Kanaiyalal Joshi and thus, he had committed a misconduct that was unbecoming of an employee working in the police department."

10. It is obvious that apart from the charge of kidnapping, rest of the charges are all independent charges on which the criminal court had no occasion to pronounce. The criminal court was not at all concerned with the misconduct of the police constable who was a married person and who ran away with a minor girl and had a holiday with her. These allegations had nothing to do with the charge under S. 363, I.P. Code. Mr. Trivedi was right when he submitted that the allegations regarding kidnapping a minor girl was mentioned in the charge-sheet, but the word " " (having kidnapped or enticed away) appear to be loosely mentioned, in the context of gravamen of the charge against the petitioner in

departmental proceedings that even though he was a police personnel, who was a married person, he eloped with a minor girl and exhibited a conduct unbecoming of a police personnel. The details of the incident as mentioned in support of the charge sheet at annexure "B" also indicate that even though the petitioner was married and was a police constable, he ran away with minor Bai Urmila and exhibited a conduct unbefitting of a member of police force. It is obvious that police authorities were entitled to look into this type of misconduct exhibited by the petitioner. It would clearly be a misconduct on the part of the police personnel who is a married person to run away with a minor girl and to have free life with her. Such allegations cannot be shut out from the departmental investigation on the spurious plea that criminal court has acquitted the petitioner of the charge under S. 363, I.P. Code, Even though he has stood acquitted of the charge under S. 363, because Urmila was of mature understanding and she seemed to have run away with the petitioner at her sweet will, it would not exonerate the petitioner of the charge levelled by the department against him namely that as a married police constable he could never have acted in such a manner and could not have run away with a minor girl and could not have lived a free life with her. Such a conduct naturally would be most unbefitting for a police personnel. As the departmental authorities have found on evidence, the petitioner had acted as a person who destroyed the confidence of the public and acted as Bhakshak (destroyer) rather than protector of the public i.e. Rakshak thereof. Such type of charge levelled against the petitioner cannot be said to be concluded by the criminal court proceedings in his case. The decision of the learned Sessions Judge exonerates the petitioner of the charge under S. 363, I.P.C. meaning thereby, he cannot be said to have kidnapped the minor girl from the lawful guardianship of her parents. However, he still remains answerable to the department for the allegations that as a married police personnel, he could not have run away with a minor girl however willing she might have been to make hay and gay with the petitioner in his company. The facts that the petitioner who was a married person ran away from his duty and moved with minor Urmila from place to place and was ultimately apprehended from a cinema theatre at Bulsar have remained well established on the record of the disciplinary authority as found from the dismissal order, at annexure "C". Such type of conduct was totally unbefitting of a police personnel. The criminal court had no occasion to pronounce upon such conduct and to decide whether such a person can be permitted to continue in the police department. That was the function entirely of the departmental authorities which they have performed in the present case. They would have failed in their duty if they had ignored such conduct of the petitioner and had refused to look into the matter departmentally. The ratio of the decision of this Court in the case of Abdul Hakim (supra), therefore, cannot apply to the facts of the present case. In fact, the very para of the circular dated 25th July, 1968 extracted earlier indicates that if the departmental proceedings are based on the allegations which were not examined by the criminal court, it would be open to the departmental authority to initiate proceedings in connection with these allegations. The said circular as seen earlier

has been referred to, with approval, by M. P. Thakkar, J, in the aforesaid decision. The present is a case which directly fits in with that part of the said circular. It was, therefore, open to the departmental authorities to take proper steps against the petitioner departmentally and to punish him in accordance with law. The first contention of Mr. Trivedi, therefore, stands repelled.

11. So far as the second contention of Mr. Trivedi is concerned, it is equally on weak footing. His submission was that exhibiting a conduct unbecoming of a police servant is not a charge which can be covered by the provisions of the Bombay Police Act or the rules framed thereunder. S. 25(1) of the Bombay Police Act reads as under :

"(1) The State Government or any officer authorised by sub-s. (2) in that behalf may suspend, reduce, dismiss or remove an inspector or any members of the subordinate ranks of the police force whom he shall think cruel, perverse, remiss or negligent in the discharge of his duty or unfit for the same, and may fine to an amount not exceeding one month's pay, any member of the subordinate ranks of the police force, who is guilty of any breach of discipline or misconduct or any act rendering him unfit for the discharge of his duty, which does not require his suspension or dismissal."

12. It cannot be disputed that if a police servant so behaves that he becomes unfit to discharge of his duty as a police servant, he can be proceeded against departmentally. It cannot be said with any emphasis that any married employee of the rank of police constable who runs away with a minor girl and has sexual intercourse with her does not exhibit a conduct which would render him unfit to remain in the police force and to discharge his duties as such. But even that apart, the provisions of the Gujarat Civil Services (Conduct) Rule, 1971 also are made applicable to the police personnel as laid down by the Gujarat Police Manual 1975 I Cha 11 which deals with conduct of Government servants. Rule 334 as found in the aforesaid chapter reads as under :

"(1) In regard to the conduct as Government servants, officers of the Indian Police Service are governed by the All India Service (Conduct) Rules, 1968.

(2) All other police officers are governed, so far as their conduct is concerned, by the Gujarat Civil Services (Conduct) Rules, 1971 and the special provision of or the orders issued under the Bombay Police Act, 1951.

(3) Assistant Public Prosecutors, ministerial staff and other class II, class III and class IV Government servants serving in the police department, are governed, so far as their conduct is concerned, by the Gujarat Civil Services (Conduct) Rules, 1971."

13. The aforesaid rule in the Police Manual leaves no room for doubt that provisions of the Gujarat Civil Services (Conduct) Rules, 1971 would ipso facto apply even to a police personnel. It is not in dispute that the petitioner was class IV employee serving in the police department. Consequently, Gujarat Civil

Services (Conduct) Rules 1971 did apply to his case and if that is so, Rule 3 of the said rules would necessarily apply to him. Rule 3(1) enjoins as under :

General. (1) Every Government servant shall at all times :

- (i) maintain absolute integrity.
- (ii) maintain devotion to duty, and
- (iii) do nothing which is unbecoming of a Government servant."

14. It is, therefore, not possible to agree with the submission of Mr. Trivedi that so far as the petitioner is concerned, as he was a police servant at the relevant time, even after he exhibited a conduct unbecoming of a Government servant, he cannot be departmentally proceeded against. The aforesaid provisions of Rule 3 of the said Rules applied to his case in all their vigour. It cannot be urged seriously that the petitioner had exhibited a conduct which cannot be branded as unbecoming of a Government servant. If such a conduct cannot be branded as such, I fail to understand which other conduct of similar gross nature can ever be considered to be unbecoming of a Government servant. The second contention of Mr. Trivedi, therefore, also stands repelled. Before parting with this contention of Mr. Trivedi, I must mention that Mr. Trivedi relied upon a decision of the Allahabad High Court reported in 1971 All LJ 90. Mr. Trivedi could not lay his hands on the said volume, but he read out from a copy of his written statement filed by the petitioner before the disciplinary authority wherein relevant paras from the said judgment have been extracted. A look at these extracted paras from the said judgment shows that the Allahabad High Court had to consider the scope of Rule 4(1)(d) of the Uttar Pradesh Disciplinary (Administrative Tribunal) Rules, 1947. Rules 2(e) of the said rules defined "personal immorality" as under :

"Personal immorality" means vicious habits relating to drink, sex and gambling which reduce the utility of a public servant so as to damage Government or the official generally in public esteem."

15. Pathak, J. of the Allahabad High Court speaking for the Division Bench ruled that on the facts of the case before them, charge of personal immorality was not brought home to the delinquent as it was found that the concerned delinquent was involved in a single act of sex misbehaviour which fell short of the requirements of personal immorality as defined by the aforesaid provision which necessitated continuous course of action or repetitive acts so as to term as vicious habit. It is difficult to appreciate how the ratio of the aforesaid judgment can apply to the facts of the present case. In the relevant service rules as applicable to the petitioner, there is no provision analogous to the personal immorality as defined by the aforesaid Allahabad rule. The petitioner in the present case had exhibited a conduct unbecoming of a police personnel. His act of running away with a minor girl even though he was a married person and living a licentious sex life with her at different places till he was apprehended from a cinema theatre at Bulsar is found to be exhibition of conduct unbefitting

of a police personnel. Consequently, the Allahabad ruling which came up for interpretation before the Division Bench of that High Court based on its own wordings which have no parallel with the relevant departmental rules applicable to the petitioner's case cannot be of any assistance to the petitioner.

16. So far as the third contention of Mr. Trivedi is concerned, it has to be rejected. It was submitted, relying on the averments made in para 8.3 of the petition that one another gentlemen Amrutbhai Chhanabhai, a constable in Rajpipla was also implicated in similar case under Ss. 363 and 366 of the I.P. Code and he was also acquitted in the sessions case and no departmental inquiry thereupon was instituted against him and therefore, also, the action of the respondent in dismissing the petitioner after holding sham and bogus departmental inquiry is violative of Arts. 14 and 16 of the Constitution of India. It is difficult to appreciate how the aforesaid contention can still help the petitioner. It is not even alleged under what circumstances Amrutbhai Chhanabhai was acquitted of the charges under S. 363 and 366 of the I.P. Code; what was the nature of the case against him and what was the nature of the prosecution evidence led in that case. In the absence of the judgment of the case against Amrutbhai Chhanabhai, it would be too hazardous to conclude as to on what basis, he was acquitted and which acquittal had not been followed by the departmental proceedings against him. Even otherwise, non-taking of action against a constable who was similarly situated delinquent would constitute a wrong on the part of the department. But that does not mean that if the department does not repeat that wrong in the case of the petitioner, he can be said to have been hostilely discriminated against. It is now well settled that if the departmental authorities commit one wrong, they cannot be compelled to commit another wrong on pain of their action being voided on the touch stone of Arts. 14 and 16 of the Constitution (vide *Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others*, . Consequently, even this third contention canvassed by Mr. Trivedi cannot be accepted, especially when the petitioner has not shown that his case on facts is identical with the case of Mr. Amrutlal Chhanabhai.

17. Rest of the judgment is not material for the reports.