

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : May 06, 2013*
Judgment Pronounced on : May 09, 2013

+ **W.P.(C) 248/2012**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Represented by: Dr.Ashwani Bhardwaj, Advocate with
Mr.S.P.Sharma, Advocate.

versus

AMIT PANWAR Respondent
Represented by: Mr.Arun Bhardwaj, Advocate with
Mr.Gyanendra Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The issue as to when a brush with criminal law would not taint a person, disentitling him from public employment, has been extensively dealt with by us in a recent decision pronounced on April 29, 2013 : WP(C) No.4052/2012 'Commission of Police vs.Mukesh Kumar'.

2. With reference to offences being categorized as felonies and misdemeanours, and in the context of the criminal law in India where offences are classified as cognizable and non-cognizable as also bailable and non-bailable, this Bench had opined that different wrongs would attract different degree of criminality; and unless the offence involves a moral turpitude, for non-serious offences, irrespective of whether the accused was convicted or acquitted, public employment should not be denied because

keeping a person out of society breeds criminality. With respect to, when a person is acquitted by a Court, but is charged of a morally depriving offence, referring to the law declared by the Supreme Court in the decision reported as (1996) 11 SCC 615 Delhi Administration vs. Sushil Kumar and an unreported decision dated November 28, 2005 of a Division Bench in WP(C) No.6042-43/2005 Government of NCT of Delhi & Anr. vs. Deepak Kumar, this Bench had opined that the nature of the acquittal; the attendant circumstances pertaining to the acquittal; the nature of the crime alleged and the circumstances under which it was allegedly committed have to be taken note of. This Bench had opined that a few decisions rendered by Coordinate Benches of this Court holding that upon being acquitted, it has to be treated that the person accused was innocent, is a wrong view of the law for the reason if a person is acquitted at a criminal trial it does not necessarily mean that the person is innocent. It only means that the prosecution was unable to muster sufficient evidence to sustain the indictment. In para 23, it was observed as under:-

“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 has 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-à-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.”

3. With the aforesaid backdrop of the legal position we proceed to discuss the facts of the instant case.
4. Respondent Amit Panwar, found himself empanelled for being appointed as a Constable (Exe.) in the Delhi Police but appointment evaded him because admittedly he was an accused in FIR No.67 dated April 02, 2009, P.S. Lal Kurti, District Meerut (U.P.) for offences punishable under Section 324/294/34 IPC. Later on, the offence for which he faced trial was under Section 307/294 IPC. He was acquitted on October 01, 2010.
5. A Screening Committee constituted by the Commissioner of Police looked into the evidence led at the criminal prosecution against Amit Panwar and recommended that he was unfit to be appointed as a Constable (Exe.) in Delhi Police. This was after notice to Amit Panwar and his reply filed thereto being considered. An order was passed on March 22, 2011 cancelling his candidature against which appeal filed was rejected on May 27, 2011. Amit Panwar filed O.A.2476/2011 which has been allowed by the Tribunal vide impugned decision dated October 25, 2011, noting the law declared by the Supreme Court in the decision reported as (2011) 4 SCC_644

Commission of Police & Ors. vs. Sandeep Kumar, where the Supreme Court opined that Sandeep Kumar who was an accused for having committed an offence punishable under Section 325 IPC could not be denied appointment to the post of a Head Constable in Delhi Police on account of he being acquitted as a consequence of a compromise entered into between him and the complainant. The reason given by the Supreme Court was that for minor offences, say stealing a loaf of bread for a hungry family, it would be wrong to brand the person a thief for his whole life.

6. The aforesaid decision of the Supreme Court was noted by us in our opinion dated April 29, 2013 in Mukesh Kumar's case (supra) and we had likewise opined that where a young and inexperienced person commits an act of indiscretion, which is a petty offence, that should not be the end of his career. But at the same time we had opined that considerations of public policy, concern for public interest and regard for public good would justify not to induct a person in public service with a criminal background and more essentially when it relates to police service. In other words, a balancing act has to be performed.

7. Proceeding further with the facts because Amit Panwar was acquitted, in a mechanical fashion the Tribunal has held in his favour and has quashed the order passed cancelling his candidature. The Commissioner of Police has been directed to give employment to Amit Panwar as a Constable in Delhi Police with all consequential benefits except back wages.

8. The Tribunal has not considered the nature of the acquittal and the attendant circumstances, nor has the Tribunal considered the nature of the indictment.

9. Amit Panwar, along with his two friends namely Rahul and Ajay

Chaudhary, were charge-sheeted for not only teasing girl students of an Airhostess Training Institute in Meerut but also of using foul, indecent, obscene and vulgar language which was an offence punishable under Section 294 IPC. All three were further charged of having attempted to murder Sanjay Sharma who had objected to the three not only troubling the girl students of the Institute but also using obscene language. As per the charge-sheet, when the staff of the Training Institute intervened the three boys ran leaving behind their motorcycle, but before that stabbed Sanjay Sharma. Petitioner and one co-accused named Rahul were apprehended at the spot and the third was caught later on. Initially the FIR was registered for offences punishable under Section 294/324/34 IPC i.e. causing hurt by dangerous weapons for the reason a knife was used to assault Sanjay Sharma, but the charge-sheet was filed for offences punishable under Section 294/307/34 IPC.

10. At the trial, Rajesh Tyagi deposed that on April 02, 2009 at about 2 O'clock the three accused used filthy language and caused injury to Sanjay Sharma.

11. We are surprised at the two line deposition of the witness by way of examination-in-chief and regretfully the learned District & Sessions Judge Meerut, did not even bother to see whether the short and the cryptic deposition was sufficient.

12. The two line deposition by way of examination-in-chief is followed by the witness being cross-examined, and surprisingly in the short six line cross-examination, the witness turned hostile by stating that he was not an eye witness and the incident did not happen in front of him and that he could not say that the accused persons used filthy language nor could he say that

the accused injured Sanjay Sharma.

13. We are surprised that the learned District & Sessions Judge let it pass. We are surprised that the Public Prosecutor also let it pass and did not declare the witness hostile; to be cross-examined. The learned District & Sessions Judge did not put any Court's question as to how come after stating that the three accused had used filthy language and had injured Sanjay Sharma, within the next minute or so, the witness deposed to the contrary when he was cross-examined.

14. Sanjay Sharma deposed that on April 02, 2009 at around 2 O'clock the three accused (whom he named) were outside the Training Institute and injured him by stabbing him with a knife. The short and the cryptic deposition in chief in four lines is followed by a cross-examination where Sanjay Sharma turned hostile and said that he cannot identify the attackers and that their names i.e. that of Amit, Ajay Chaudhary and Rahul was disclosed by some employees.

15. We are surprised that the learned District & Sessions Judge as also the Public Prosecutor allowed it to pass.

16. Lawyers have often complained to Judges on the administrative side that many Judges in the District Courts permit evidence to be led with the Reader of the Court supervising the same; whilst the learned Judge engages himself in other miscellaneous work, such as completing pleadings and hearing arguments.

17. The trial of three accused before the learned District & Sessions Judge, Meerut appears to be proof of correctness of said complaints. Within minutes of deposing, albeit cryptically, and incriminating the three accused, in cross-examination which followed and lasted for not more than 2 minutes,

both witnesses turned hostile. Had the learned District & Sessions Judge recorded evidence before him he would have certainly ensured that the Public Prosecutor declares the two witnesses hostile and cross-examine the witness. Further, he would have ensured that the examination-in-chief was proper.

18. Thus, the nature of the evidence led which has resulted in three accused being acquitted, keeping in view the approach to the subject as per para 23 of the decision in Mukesh Kumar's case (supra), compels us to conclude that the respondent is unfit to be appointed as a Constable (Exe.) in Delhi Police.

19. Insensitivity of mall police officers on gender issues is a matter of concern and of lately has roused the passion of the common man and women who have repeatedly taken to the streets against police apathy towards gender crimes. Thus, where a male has a brush with a criminal law pertaining to a gender crime, one has to be much more careful.

20. The legal infirmity with the view taken by the Tribunal is three fold. Firstly, the Tribunal lost sight of the fact that its job was supervisory in nature to ensure that the Commissioner of Police exercised his discretion within the boundaries of his administrative discretion. The Tribunal overlooked that a Screening Committee was constituted which considered the nature of indictment, the circumstances of respondent and his co-accused being acquitted. To put it pithily, the Screening Committee considered all relevant material. The Tribunal overlooked that it is the decision making process which should have been under the gaze of the Tribunal and not the merits of the decision. Secondly, the Tribunal itself fell into an error by ignoring that it was not to go by the simple fact that the respondent was

acquitted. Lastly the Tribunal overlooked that in Sandeep Kumar's case (supra) the Supreme Court had held that minor indiscretions committed by the young should be ignored; and not serious offences and acts. The Tribunal overlooked the fact that the respondent was accused of a gender crime and did not further consider the desirability of such persons being employed in the police. Further, the Tribunal did not even bother to note the circumstances under which the respondent was acquitted.

21. The writ petition is accordingly allowed. Impugned judgment and order dated October 25, 2011 passed by the Tribunal is set aside and O.A. 2476/2011 filed by Amit Panwar is dismissed.

22. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 09, 2013
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