

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.35452 of 2016

Order: (per V.Ramasubramanian, J.)

The petitioners have come up with the above writ petition challenging an order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, refusing to interfere with the disciplinary proceedings initiated against them.

2. Heard Mr. S.Ashok Anand Kumar, learned counsel for the petitioners.

3. The petitioners were prosecuted before the Criminal Court in C.C.No.634 of 2008 for alleged offences under Sections 384 and 506 read with Section 34 IPC. The case ended in acquittal.

4. Thereafter, the Department initiated disciplinary proceedings. Seeking a declaration that the disciplinary proceedings were on the same set of facts sought to be established on the basis of the same evidence as was before the Criminal Court, the petitioners filed an application before the Tribunal. Based upon the principles of law laid down by the Supreme Court in **G.M. TANK v. STATE OF GUJARAT** [(2006) 5 SCC 446], **Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao** [(2012) 1 SCC (L&S) 171], the Tribunal dismissed the application. Therefore, the petitioners are before this Court.

5. Before considering the legal submissions made by the petitioners, it is necessary to look at the charge-sheet filed against the petitioners before III Metropolitan Magistrate's Court, Visakhapatnam. The charge-sheet reads as follows:

“CHARGE SHEET FILED U/S.384, 506 R/W 34 IPC; CR. NO.187/08 KANCHARAPALEM POLICE STATION, VISAKHAPATNAM CITY.

A-1 is a Police Constable with roll No187 working at Gopalapatnam Police Station. A-2 is another Police Constable with roll No.2849 working at Law and Order Kancharapalem P.S. A-3 is a civilian and close associate of A-1 & A-2.

LW-1 (P.Suresh Kumar) is working as Lab Assistant in Kottack School, Chinawaltair. He has been staying at Ramnagar, Visakhapatnam. LW-2 is residing in a flat at Vasavi Enclave near Old CBI Junction, Visakhapatnam. LWs.1 & 2 are close friends. LW-3 is the Sub-Inspector of Police working at Law and Order III Town Police Station. LWs.4 & 5 are the Head Constable and Home Guard working under LW-3 at III Town Police Station, Visakhapatnam City.

On 26-4-2008 at around 8-00 P.M., LW-1 left his house at Ram Nagar in his car bearing Regd.No.AP31AQ-7201 for his in laws house at Muraleenagar. When he reached R & B road junction by about 8-00 P.M., he stopped his car on the way to R & B road, taking a turn to answer a phone call. He parked his car on the road side and while speaking in his cell phone, suddenly two persons belongs to Intelligence Department and one of them disclosed his identity as Circle Inspector, both of them tried to scare LW-1 by saying that some murders took place on the area recently when LW-1 parked his car. At the same one person out of the two spoken in his cell phone and called another male person. The third person also posed himself as Circle Inspector and joined the two and all the three started threaten LW-1 demanding money. LW-1 replied that he has only Rs.1,500/- in his wallet but A-1 to A-3 insisted LW-1 to pay Rs.25,000/- so as to leave him without any problem. LW-1 made A-1 to A-3 to believe that he would pay the money demanded by A-1 to A-3 provided if A-1 to A-3 accompanying him to his house. A-1 to A-3 agreed to it and boarded the car of LW-1 leaving the vehicles brought by them at the spot. On the way LW-1 called LW-2 over his cell phone and requested him to arrange cash saying that he is in life risk as some criminals demanded him to pay Rs.25,000/- and therefore LW-1 is in need of money to pay to A-1 to A-3. LW-1 further informed LW-2 that he is bring to his residence near CBI office which is very close to III Town Police Station. LW-1 thought that he would be safe, if he reach III Town Police Station Limits. LW-1 reached the house of LW-2 where he told LW-2 to contact the Sub-Inspector of Police Kantha Rao of III Town Police Station and request him to send his staff to nab the 3 persons who were available in his car. In the meanwhile LW-2 reached the spot followed by LWs.4 & 5 by an auto.

At the same movement LW-2 paid Rs.5,000/- to A-3 who sat in the front seat of the car. At the same time LWs.4 & 5 caught hold of A-1 to A-3. Then LWs.1 & 2 and LWs.4 & 5 confirmed A-1 & A-2 are Police Constables attached to Gopalapatnam and Kancharapalem Police Stations, Visakhapatnam City. Immediately LWs.4 & 5 informed LW-3 of the above developments. LW-3 in-turn directed LWs.4 & 5 to take them to Kancharapalem Police Station and handover A-1 to A-3 together with the cash found within the possession of A-3. Accordingly LWs.4 & 5 accompanied by LWs.1 & 2 took A-1 to A-3 in the car of LW-1 to Kancharapalem Police Station and produced them before the LW-8, when LW-1 presented a report for taking necessary action.

LW-8 registered the report of LW-1 as a case in Cr.No.187/2008 u/S.384, 506 r/w 34 IPC and arrested A-1 to A-3 in presence of LWs.6 & 7 on 26/27-4-2008 at 02-00 hours, seized the cash of Rs.5,000/- (all in five hundred rupee denomination) including cell phones of A-1, A-3 and two wheelers of A-1 & A-3 under the cover of a mediators report attested by LWs.6 & 7. LW-8 investigated the case and sent A-1 to A-3 for remand before III M.M. Court, Visakhapatnam. On completion of investigation LW-8 filed charge sheet in the case.

The above facts revealed that A-1 to A-3 have committed offence punishable under Sections 384, 506 r/w 34 IPC.

Hence the charge.”

6. It is relevant to note that the 1st petitioner herein was A-1 and the 2nd petitioner herein was A-2 in the criminal case.

7. It appears that four witnesses were examined on the side of the prosecution and all of them turned hostile. Interestingly, the Investigating Officer was not examined, for reasons which are not clearly decipherable from the records. Therefore, the Criminal Court acquitted the petitioners.

8. The statement of Articles of Charge as per Annexure-I to the Departmental Charge Memo reads as follows:

“Statement of the articles of charge framed against Sri T.Maheswara Rao, PC 187, Visakhapatnam City:

Sri T.Maheswara Rao was enlisted as a Police Constable on 31-3-1995, in Visakhapatnam City, with General No.187. He is due to retire on superannuation on 31-5-2034. He is, hereafter, called as the Government

Servant. That the Government Servant exhibited gross misconduct by involving in a criminal case vide Cr.No.187/2008 u/S.384, 506 r/w 34 IPC of Kancharapalem P.S.”

9. From a reading of the charge-sheet filed before the Criminal Court and the Charge Memo issued in the departmental proceedings, it is clear that though the foundation for both of them was the same, the imputations are not exactly the same. The imputations before the Criminal Court relate to the commission of offences under Sections 384 and 506 read with Section 34 IPC. The imputations in the departmental proceedings revolve around the conduct of the petitioners as Government Servants, which led to the initiation of criminal proceedings against them. It is this line of demarcation that has been appreciated well by the Tribunal and we see no reason to interfere with the order of the Tribunal.

10. However, the learned counsel for the petitioners submitted that the order of the Tribunal is contrary to the law laid down by the Supreme Court and this Court. The learned counsel cited a few decisions for our perusal and appreciation.

11. The first decision cited by the learned counsel for the petitioners is the one in **G.M. TANK v. STATE OF GUJARAT**¹. But in this case, the Supreme Court recorded a categorical finding in para-31 that there was no iota of

¹ (2006) 5 SCC 446

difference between the facts and the evidence in the departmental as well as criminal proceedings. Moreover, the Supreme Court found in **G.M. TANK** (1 *supra*) that it was a case of honourable acquittal. Incidentally, the case related to acquisition of wealth disproportionate to his known sources of income. Therefore, the very same charge could not have been proceeded departmentally. Hence, **G.M. TANK** (1*supra*) is distinguishable on facts.

12. The 2nd decision relied upon by the learned counsel for the petitioners is the one in **INSPECTOR GENERAL OF POLICE v. S.SAMUTHIRAM**². In the said case, the Supreme Court categorically held in para-23 that mere acquittal of an employee by a Criminal Court has no impact on the disciplinary proceedings. That was a case where witnesses for the prosecution turned hostile and hence the Supreme Court pointed out from paragraph-24 onwards, the distinction between an honourable acquittal and acquittal on the basis of doubt. Therefore, this decision supports the respondents more than the petitioners.

13. In **S.BHASKAR REDDY v. SUPT. OF POLICE**³ relied upon by the learned counsel for the petitioners, the Supreme Court recorded a finding that the employees were acquitted honourably by the Criminal Court. Therefore, this distinction has to be kept in mind.

² (2013) 1 SCC 598

³ (2015) 2 SCC 365

14. In **JOGINDER SINGH v. UT OF CHANDIGARH**⁴, the issue involved was not as to whether departmental proceedings can go on, after an acquittal. The appellant before the Supreme Court was denied appointment on the basis of his involvement in a criminal case from which he was acquitted. Therefore, the said decision is of no avail to test the entitlement of an employer to proceed with disciplinary enquiry.

15. In **SBI v. R.PERIYASAMY**⁵, the Court was not concerned with the right of the employer to initiate disciplinary action after acquittal. Therefore, the said decision cannot be of any use to the petitioners.

16. In **UNION OF INDIA v. PURUSHOTTAM**⁶, the Court reiterated the principle that acquittal by Criminal Court would not automatically and conclusively impact departmental proceedings, firstly because of disparate degrees of proof, secondly because criminal prosecution is not within the control of the department and thirdly because there is a distinction between a positive decision and a passive verdict. Therefore, the said decision also is in favour of the respondents.

17. As pointed out by the Administrative Tribunal, the *de facto* complainant by name Tyvedu Suresh Kumar, though cited as first witness in the charge-sheet, was not

⁴ (2015) 2 SCC 377

⁵ (2015) 3 SCC 101

⁶ (2015) 3 SCC 779

examined before the Criminal Court. It was only his friend P.Nagendra Prasad who was examined as P.W.1. The statements under Section 161 Cr.P.C recorded from P.Ws.1 and 2 were marked as Exs.P-1 and P-2. The signatures of P.Ws.3 and 4 were marked as Exs.P-3 to P-6. For some strange reason, the Investigating Officer who arrested the applicants and recovered the amount was not examined before the Criminal Court. But all of them are cited as witnesses in the disciplinary enquiry. Therefore, the acquittal was obviously due to some kind of cooperation rendered by the prosecution and the witnesses cited in the departmental enquiry are not the same as those examined before the Criminal Court. Therefore, the view taken by the Tribunal was correct and proper.

18. In fine, we find no merits in the writ petition and hence it is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

02nd November, 2016.
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