

**223 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.28625 of 2017 (O&M)

Date of decision : 02.02.2023

Sukhjit Singh

..... Petitioner

versus

Pepsu Road Transport Corp. & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Pankaj Katia, Advocate
for the petitioner.

Mr. Anil Kumar Sharma, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed impugning charge-sheet dated 04.09.2017 (Annexure P-4) claiming it to be barred under the principle of *double jeopardy* as recognized under Article 20 of the Constitution of India.

Petitioner was working as Driver with the respondent-Corporation. The bus met with an accident and an FIR No.5 dated 08.02.2015 under Sections 279, 304-A & 427 IPC was registered at Police Station Ganda Kheri came into being wherein the petitioner was named as accused. The petitioner was charged by the employer for major misconduct vide memo issued in 2015 itself which has been placed on record at Annexure P-1. The petitioner was held guilty and two annual increments were ordered to be annulled on temporary basis vide order dated 04.02.2016 (Annexure P-2). The trial culminated in the order of acquittal vide judgment dated 08.04.2016 (Annexure P-3). Operative part thereof reads as under :-

10. Accordingly, point of determination is decided against the prosecution as it has failed to prove its case. Resultantly, accused is acquitted of the charges framed against him in this case due to lack of evidence. The bail and surety bonds stand discharged. Case property be dealt with as per rules after the expiry of period of appeal or revision, if any. File be consigned to the Record Room.”

Though the petitioner was acquitted in the criminal trial yet in the petition filed under the provisions of Motor Vehicles Act, 1988 respondents-Corporation and the petitioner were held entitled to compensate the victim. On the basis of such award having been passed by the MACT, another charge-sheet dated 04.09.2017 has been issued which has been impugned in the present writ petition.

Learned counsel for the petitioner submits that the petitioner having already been proceeded against by the department in earlier charge-sheet and having been punished subsequent charge-sheet amounts to *double jeopardy*. In his support reliance is being placed upon ***Jamal Masih Vs. State of Punjab, (1997) 1 SLR 556.***

Per contra learned counsel for the respondents would submit that it is not a case of *double jeopardy* as after MACT award has been passed against the employer holding the employee guilty of rash and negligent driving there was a subsequent cause of action in favour of the employer to charge-sheet the employee. He has relied upon law laid down in ***Tariq Ali Khan Vs. Govt. of NCT of Delhi & others*** passed by Division Bench of Delhi High Court in Writ Petition (Civil) No.1921 of 2015 wherein it has been held as under :-

“18. The Supreme Court in the case of State of Haryana versus Balwant Singh, (2003) 3 SCC 362 had dealt with the case of a bus driver, who was awarded punishment of reduction of pay to the minimum scale in the disciplinary proceedings. However, subsequently, for the same occurrence/act, he was convicted under [Section 304A IPC](#) and based upon his conviction his services were terminated. The employee challenged the order of termination and was

successful as the plea of double jeopardy, i.e., the employee cannot be punished twice, was accepted by the High Court. The State of Haryana had filed an appeal. Reversing the finding of the High Court, the Supreme Court held that there was a manifest error in holding that the employee had been prosecuted and punished twice. The order in the departmental proceedings was distinct from the order passed pursuant to conviction of the employee in the criminal case under Section 304A IPC. There was no question of the employee suffering double jeopardy. The second order was permissible under the powers conferred. Reference was made to the earlier decision of the Supreme Court in Union of India versus P.D. Yadav, (2002) 1 SCC 405.”

I have heard learned counsel for the parties and have gone through the records of the case.

Thus short question involved in the present case is as to whether the subsequent charge-sheet issued admittedly for the same accident for which the earlier charge-sheet was issued amounts to *double jeopardy* or not? Mr. Anil Kumar Sharma, Advocate for the respondents has very fairly conceded the factual position on record that the accident involved is the same. He also does not dispute that the employer in its own wisdom without waiting for the MACT award proceeded on to punish the employee vide order dated 04.02.2016 (Annexure P-2).

The contention raised by Mr. Anil Kumar Sharma, Advocate if further stretched, shall mean that the petitioner can again be prosecuted after the compensation awarded by MACT is further enhanced in appeal by the High Court and still further again in case the said compensation is further enhanced by the Apex Court in the ultimate round. Such interpretation would lead to absurdity. Once it is not disputed that the two charge-sheets under reference relate to the same incident, the subsequent charge-sheet will definitely be barred by the principle of double jeopardy as recognized under Article 20(2) of the Constitution of India. Employer would have been well within its right to await

the decision of MACT before concluding the proceedings under the first charge-sheet. However, the employer having opted to punish the petitioner before the award of MACT cannot be allowed to turn back and claim that award passed by MACT would give him fresh cause of action to prosecute the employee once again qua the same transaction.

Thus in the considered opinion of this Court subsequent charge-sheet for the same accident would definitely amount to *double jeopardy* and would be barred. So far as the law laid down in *Tariq Ali Khan's case supra* is concerned it was a case wherein subsequently the employee was convicted and based upon that conviction the services of the employee were terminated. It was in these circumstances, that the Delhi High Court had held that it would not be a case of *double jeopardy*.

In view of the aforesaid facts, present writ petition is allowed.

(PANKAJ JAIN)
JUDGE

02.02.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No