

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(Sr. No. 105)

LPA No.175 of 2024 (O&M)

Date of decision: 19.01.2024

State of Punjab and others

.....Appellants

Versus

Sohan Lal

.....Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Ramandeep Singh Pandher, Sr. DAG, Punjab
for the appellants.

* * *

DEEPAK SIBAL, J. (Oral)

(1) On 15.11.1988 the respondent was recruited as a Constable in the Punjab Police and thereafter promoted as Head Constable. After he had served as a member of the Punjab Police for nearly 30 years, an FIR dated 14.05.2017 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short - NDPS Act) was registered against him, which led to his arrest. After investigation, the police filed a report under Section 173 of the Code of Criminal Procedure on the basis whereof charges were framed against the respondent to which he pleaded not guilty. Resultantly, he was put to trial.

(2) During the pendency of his trial a charge-sheet in a departmental inquiry was also served upon him. The identical allegations in the criminal case and the departmental inquiry were that on 14.05.2017, on the basis of suspicion, the respondent, along with Head Constable Vijay Kumar and one Satpal @ Pal were searched which resulted in the recovery of 150 grams of heroin from the said 03 persons which included 40 grams of heroin from the respondent's person. The respondent denied the charges. A regular inquiry followed. In these proceedings the respondent was held guilty. On consideration of the inquiry report, through order dated 11.01.2018, the Senior Superintendent of Police, Sangrur (for short - the SSP) who was the respondent's disciplinary authority, imposed upon the respondent the punishment of forfeiture of 05 years of his service. The appellate authority *i.e.* the Inspector General of Police, Patiala Range, Patiala (for short - the IGP) enhanced the punishment awarded to the respondent and through his order dated 17.08.2018 ordered the respondent's immediate dismissal from service. The respondent challenged the order of the IGP before the Director General of Police, Punjab, who rejected such challenge through his order dated 01.09.2019.

(3) In the meanwhile, the respondent's criminal trial continued before the Special Court at Jalandhar (for short - the Special Court). Through judgment of the Special Court dated 20.07.2022, the respondent was acquitted of all criminal charges.

(4) On the basis of his acquittal the respondent filed a writ petition before this Court seeking therein quashing of the orders initially imposing the punishment of forfeiture of service and thereafter his dismissal. A learned Single Judge of this Court, through judgment dated

19.05.2023, allowed the respondent's writ petition after concluding that the departmental and criminal proceedings launched against the respondent were on identical facts and the Special Court had specifically held that the respondent had been falsely embroiled in the criminal case. The judgment of the learned Single Judge dated 19.05.2023 is the subject matter of challenge through the present Intra Court Appeal.

(5) Learned State counsel assailed the impugned judgment by submitting that the respondent's dismissal had resulted from his involvement in a criminal case under the NDPS Act; the respondent's dismissal should have not been set aside by the learned Single Judge only on the basis of his acquittal by the Special Court as the required standard of proof in departmental proceedings and criminal proceedings were distinct and that in the criminal proceedings the respondent had not earned honourable acquittal as he had been acquitted only after giving him benefit of doubt.

(6) Learned State counsel has been heard and with his able assistance the record of the case has also been perused.

(7) Rule 16.3 of the Punjab Police Rules, 1934 (for short - the 1934 Rules), which is relevant, reads as under :-

"16.3. Action following on a judicial acquittal. - (1) When a Police Officer has been tried and acquitted by a criminal court he shall be not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless -

(a) the criminal charge has failed on technical grounds; or

(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or

(e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of Deputy Inspector-General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

(8) As per the afore quoted Rule, when a police officer’s criminal trial ends in his acquittal he cannot be punished as a result of departmental proceedings on the same charge or on a different charge upon the evidence cited in the criminal proceedings which evidence may or may not have been actually led in the criminal case. The exceptions are if the acquittal by the criminal Court is on a technical ground or if the prosecution witnesses have turned hostile or if the trial Court in its judgment has raised suspicion on the police officer of having committed the offence he is charged and tried for or if the evidence led in the criminal case justifies departmental action against the police officer on a separate charge or if any additional admissible evidence is available in the departmental proceedings.

(9) In this regard the legal position settled by the Supreme Court is also that when punishment resulting from departmental proceedings is questioned before a writ Court the jurisdiction of the writ Court is restricted to examine as to whether the decision making process was legal and to determine if any material evidence had been ignored or if any irrelevant evidence had been relied upon by the inquiry officer. Mere

acquittal of the petitioner in the criminal proceedings would not entitle him to claim any benefit including that of reinstatement provided that the charges and evidence in the departmental inquiry and the criminal case are similar/identical and that the acquittal of the petitioner in the criminal proceedings is only when the trial Court has clearly opined that the prosecution has miserably failed to prove its case and that too after careful scanning of the entire prosecution evidence.

(10) In this regard the following observations by the Supreme Court in ***Ram Lal Vs. State of Rajasthan and others, (2024) 1 Supreme Court Cases 175*** may be usefully referred to:-

“10. We have examined both the questions independently. We are conscious of the fact that a writ court’s power to review the order of the Disciplinary Authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. [See SBI vs. A.G.D. Reddy, (2023) 14 SCC 391. As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the Disciplinary Authority have ignored material evidence and if it so finds, courts are not powerless to interfere. [See United Bank of India vs. Biswanath Bhattacharjee, (2022) 13 SCC 329].

11. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See State of T.N. v. S. Samuthiram, (2013) 1 SCC 598).

12. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the

Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra).”

(11) Let us now examine the facts of the present case.

(12) The identical charges against the respondent in both the departmental and criminal proceedings were that on 14.05.2017, he along with Vijay Kumar and Satpal were searched resulting in the recovery from them of 150 grams of heroin which included 40 grams of heroin from the respondent.

(13) In the departmental proceedings 04 witnesses were produced by the department. These included Assistant Sub Inspector Kuldeep Singh and Inspector Navdeep Singh. The inquiry report found the respondent guilty. Through order dated 11.01.2018 the respondent's disciplinary authority imposed upon the respondent the punishment of forfeiture of 05 years of his service. Later, through order dated 17.08.2018, the IGP enhanced the respondent's punishment to dismissal from service. Such punishment was upheld by the DGP through his order dated 01.09.2019.

(14) In the respondent's criminal trial, along with other witnesses, ASI Kuldeep Singh and Inspector Navdeep Singh were also produced by the prosecution. After examining the entire case of the prosecution, the Special Court arrived at a definite conclusion that the respondent had been falsely embroiled in the criminal case. Therefore, acquitted him.

(15) The learned Single Judge meticulously examined the judgment of the Special Court. Testimonies of the material prosecution witnesses were also scrutinized. Only thereafter did the learned Single Judge conclude that the respondent's acquittal by the Special Court was because the prosecution had miserably failed to prove its case and that the acquittal was not on account of any technical reason. In this regard the following observations by the learned Single Judge would be useful to refer to:-

“10. In the judgment acquitting the petitioners though from the concluding para it seems that the petitioners have been ordered to be acquitted by granting them benefit of doubt but from the reading of the judgment as a whole and especially the findings returned by the Court the inference that can be drawn is that the acquittal is not on account of any technical reason but on account of falsity of the case projected by the prosecution against the petitioners. The Court has relied upon the testimonies of alleged recovery witnesses namely Head Constable Rakesh Kumar who appeared as PW-3 and ASI Kulwinder Kumar who appeared as PW-6 to conclude as under :-

“27. Further the material admissions in the cross-examination of prosecution witnesses not only impeaches their credit, rather proved the fact that they have deposed falsely in the court on oath, though previously they were knowing the fact that the accused were also police officials and despite this fact the accused have been implicated merely at the asking of a stock witness. As such, in these facts and circumstances, even the discrepancies as well as contradictions surfacing in the statement of prosecution witnesses not only discredit their version rather makes the whole story of prosecution as implausible and improbable. As such, on this account, the law referred by learned defence counsel in State of Himachal Pradesh Vs. Trilok Chand & Anr. 2018(2) RCR(Criminal) 641 also gives support and strength to the stand of accused.

29. Accused examining DW1 ASI Manjit Singh has brought the material record in regard to the presence of accused Vijay Kumar showing that he was on training from

21.07.2016 to 21.11.2017 and he proved the attendance register showing the attendance of Vijay Kumar from 11.05.2017 to 13.05.2017 at Sr.No.3 as Ex.DWI/A. DW1 further stated that the presence was marked by Inspector and ASI Partap Chand. He further stated that he was also present, when the presence of the official was marked. Attendance register was being maintained by their incharge Inspector namely Narinder Kumar. DW1 further Stated that he has also brought Roznamcha register for the period from 23.03.2017 to 31.08.2017 and as per entry DDR no.3 dated 11.05.2017 at 10:05 am made in Roznamcha PPHC Vijay Kumar no.2651 Jalandhar alongwith other official joined course at Police Training School Police Lines, Jalandhar with respect to the course Anti Riot Control Tactics and Police Batton Tactics. He has also proved the documents Ex.DWI/B and further stated that accused Vijay Kumar was relieved from course on 13.05.2017 at 04:00 p.m through entry Ex DWI/C. Prosecution cross-examined DW1, but he has failed to elicit any such material from the mouth of this witness, which proves the fact that accused Vijay Kumar has not attended the course. DW1 stated the fact Vijay Kumar was relieved on 13.05.2017 from the police line and he was not undergoing any training on 14.05.2017. However, bringing of this material in the cross-examination of DW1 does not help to the story of prosecution, because this witness proved the document that he was on training for a specific period from 23.03.2017 to 31.08.2017. Though he may be relieved later on at the instance of police officials, who implicated him in the present case. On this account admissions in the cross-examination of PW3 as well as other prosecution witnesses fortify the version of accused and falsify the story of prosecution.”

11. In order to appreciate the findings recorded by the trial Court it will be apposite to reproduce the testimonies of the aforesaid witnesses to the recovery as culled out in the judgment which read as under :-

19. Prosecution examining HC Rakesh Kumar as PW3 has also tried to corroborate the story put up by the prosecution, but this very witness in his cross-examination totally falsified the version narrated by the IO in regard to the factum of recovery from the possession of accused. PW3 in his cross-examination stated the fact that he had not joined any investigation with ASI Resham Singh, rather he was with SHO Navdeep Singh on 14.05.2017 and he remained in police station with the SHO, where accused Vijay Kumar as well as Sohan Lal have been brought from their house and bus stand respectively at the instance of SHO on 13.05.2017. PW3 further stated in his cross-examination that Vijay Kumar was attending the class of training in Police Line, Jalandhar on 13.05.2017 till 1:30 pm and then he was taken firstly to his house and after-

changing the clothes in civil dress, he was brought to the police station PW3 also stated that the documents Ex.P1 to Ex.P10 have been signed in the police station by him and Vijay Kumar and Sohan Lal were police officials at the time of registration of the case. PW3 also stated the fact that Sohan Lal was posted in Centralized Malkhana being Incharge of NDPS Act cases and Vijay Kumar was also posted in the Police Line, Jalandhar. Above admissions in the cross-examination of this witness proves the fact that he has taken a U-Turn and totally belied his material stated in the examination in chief and falsify the stand of I.O. The matter does not ends here, because this witness has totally demolished the story of the prosecution by making material admissions in his cross-examination. As such, testimony of this witness proves the version of defence and falsify the story set up by the prosecution.

20. Leaving aside the above aspect, prosecution examining PW6 ASI Kulwinder Kumar, another recovery witness have tried to improve their version on the spot. PW6 in his cross-examination also stated the fact that he has stated in his statement under Section 161 Cr.P.C that the case property and motorcycle were taken into police possession through recovery memo, but when this witness has been confronted with his previous recorded statement Ex.D2, then it has not been found therein. Furthermore, PW6 in his cross-examination also has not denied the fact that Vijay Kumar has been arrested from the police line, Jalandhar, when he was attending the classes. The matter does not end here, because PW6 in his cross-examination also has not denied the fact that the alleged motorcycle mentioned in the case, was lifted from the quarter of Vijay Kumar. As such, this witness again raised not only suspicion, rather falsify the story of prosecution and indirectly proved the version of the accused. PW6 also admitted the fact that signatures of accused were not obtained on the case property and recovery memo. As such, material admissions surfacing in the cross-examination of alleged witness again goes to the root of the matter and proves the fact that none of both the witnesses have given corroboration to the story brought by the IO. Furthermore material admissions surfacing in the cross-examination of IO also impeached his credit in regard to the fact that he has also given joint offer of search, which is neither legal and not permissible. On this account the law referred by the learned defence counsel in State of Rajasthan Vs. Parmanand and another, 2014(2) RCR(Crl.) 40: Kewal Singh Vs. State of Punjab, 2018(4) RCR(Criminal) 580 and Kulwinder Kumar @ Bona Vs. State of Punjab, 2018(3) RCR(Crl.) 910 directly and squarely covers to the matter in controversy.”

12. After reading the testimonies as reproduced by the trial Court in the judgment and the findings recorded by the trial Court in paras preceding the ultimate paragraph this Court has

no doubt that the acquittal of the petitioners is not merely a benefit of doubt. Rather there is a specific finding recorded by the trial Court that the case under which the petitioners were booked was planted upon them and the fact that the petitioner-Vijay Kumar was undergoing police training course on the fateful day bears uncontroverted testimony to the same.”

(emphasis supplied)

(16) Having ourselves gone through the judgment of the Special Court we fully concur with the afore quoted findings returned by the learned Single Judge.

(17) Thus, in the departmental and criminal proceedings the charges against the respondent were identical. In the departmental proceedings the respondent was held guilty and punished with dismissal from service. Later, in the criminal proceedings, after having gone through the entire case of the prosecution, the Special Court arrived at a definite conclusion that the prosecution had miserably failed to prove its case and that the respondent had been falsely embroiled in the criminal case. The respondent's acquittal was not on any technical ground.

(18) In the light of the above, denying the respondent the benefit of his acquittal simply because the expression used by the Special Court to acquit the respondent is by giving him the “benefit of doubt” would be unjust. It would also be against Rule 16.03 of the 1934 Rules.

(19) In this regard the following observations by the Supreme Court in **Ram Lal's** case (supra) may be usefully referred to:-

“27. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 – original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution

were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S. Samuthiram (Supra).]

28. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

(emphasis supplied)

(20) In view of the above discussion we find no merit in the instant intra Court appeal.

(21) Dismissed.

(DEEPAK SIBAL)
JUDGE

19.01.2024
sunil yadav/gk

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No