

Naresh Kumar Etc. Vs. State

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Court : Delhi

Decided On : Nov-25-2013

Judge : S. P. Garg

Appellant : Naresh Kumar Etc.

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

21. t NOVEMBER, 2013 DECIDED ON :

25. h NOVEMBER, 2013 + CRL.A. 389/2003 & CRL.M.A.Nos. 1592/2003 & 7482/2004 NARESH KUMAR ETC.Appellants Through : Mr.Chirag Madan, Advocate with Mr.Sudeep Yadav, Advocate. versus .Respondent STATE Through : Mr.M.N.Dudeja, APP. CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Naresh Kumar (A-1) (since deceased) represented by Smt.Kanta, Dharam Singh (A-2), Om Prakash (A-3), Ashok and Tripat were arrested in case FIR No.122/96 under Sections 308/34 IPC registered at PS J.P.Kalan and sent for trial on the allegations that on 05.12.1996 at about 12.10 (Noon) in furtherance of common intention, they inflicted injuries to Balwan Singh and Vijay Singh. Vide order dated 01.04.1999, they were charged under Sections 308/325/34 IPC. The prosecution examined twelve witnesses to bring home their guilt. In their 313

statements, they pleaded false implication and examined DW-1 (Suresh Kumar) in defence. On appreciating the evidence and after considering the rival contentions of the parties, the Trial Court, by the impugned judgment dated 09.05.2003 in Sessions Case No.166/02 held them guilty under Section 325 IPC (A-1) and under Section 323 IPC (A-2 & A-3). It is relevant to note that Ashok and Tripat were acquitted of the charges and the State did not challenge their acquittal. By an order dated 26.05.2003, A-1 to A-3 were released on probation and directed to pay total compensation of ` 20,000/- to the victims. Being aggrieved, A-1 to A-3 have preferred the appeal. It is apt to note that A-1 expired during the pendency of the appeal and his legal heir - Smt.Kanta was permitted to continue with the appeal vide order dated 05.04.2005.

2. During the course of arguments, learned counsel for the appellants, on instructions, stated at Bar that the appellants have opted not to challenge the findings of the Trial Court on conviction. He prayed to direct the A-1s employer to release A-1s pension and relied on *Rajbir vs. State of Haryana*, AIR 1985 SC1278

3. Since the appellants have given up challenge to the findings of the Trial Court on conviction in the presence of overwhelming evidence, the conviction under Section 325/323 IPC is affirmed. The convicts were released on probation and were directed to pay compensation of ` 20,000/- to the victims which has since been deposited in the Court. Section 12 of the Probation of Offenders Act can be brought to the notice of the concerned authorities for getting the required relief and in case of non-compliance, deceaseds legal heirs can avail legal remedies available under law. The Court is not aware as to what disciplinary action (if any) has been initiated by the concerned department against A-1 after his arrest and conviction in the present proceedings or in any other proceedings. Order-sheet dated 08.07.2003 records that A-1 was wanted in a shooting incident and it is not clear if he faced criminal proceedings in the said case or what was its outcome. In the absence of any cogent material before this Court, no direction, as prayed for by the appellant, can be given. In the case of *Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank*, (2010) 8 SCC573 the Supreme Court held :

9. The sole question involved in this case is whether the benefit granted to the appellant under the provisions of Act, 1958 makes him entitled to reinstatement in

service. The issue involved herein is no more res integra. In Aitha Chander Rao v. State of Andhra Pradesh, 1981 (Suppl.) SCC17 this Court held : As the appellant has been released on probation, this may not affect his service career in view of Section 12 of the Probation of offenders Act.

10. The said judgment in Aitha Chander Rao (Supra) was not approved by this Court in Harichand v. Director of School Education : (1998) 2 SCC383 observing that due to the peculiar circumstances of the case, the benefit of the provisions of 1958 Act had been given to him and as in that case there had been no discussion on the words "disqualification, if any attaching to a conviction of an offence under such law", the said judgment cannot be treated as a binding precedent. This Court interpreted the provisions of Section 12 of the 1958, Act and held as under: In our view, Section 12 of the probation of offenders Act would apply only in respect of a disqualification that goes with a conviction under law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not by reason of Section 12, suffers the disqualification. It cannot be held that by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service. (Emphasis added) XXX XXX XXX¹⁴ In State of U.P. v. Ranjit Singh, AIR 1999 SC1201 this Court has held that the High Court, while deciding a criminal case and giving the benefit of the U.P. First Offenders Probation Act, 1958, or similar enactment, has no competence to issue any direction that the accused shall not suffer any civil consequences. The Court has held as under: We also fail to understand, how the High Court, while deciding a criminal case, can direct that the accused must be deemed to have been in continuous service without break, and, therefore, he should be paid his full pay and dearness allowance during the period of his suspension. This direction and observation is wholly without jurisdiction.... XXX XXX XXX¹⁷ In view of the above, the law on the issue can be summarized to the effect that the conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against the employee or to take appropriate steps for his dismissal/removal only on the

basis of his conviction. The word 'Disqualification' contained in Section 12 of the Act, 1958 refers to a disqualification provided in other Statutes, as explained by this Court in the above referred cases, and the employee cannot claim a right to continue in service merely on the ground that he had been given the benefit of probation under the Act, 1958.

4. In the light of above discussion, the prayer asked for by the appellants cannot be incorporated in the judgment. The appeal stands dismissed. The compensation amount deposited in compliance of the judgment be released to the victims. Pending applications also stand disposed of. (S.P.GARG) JUDGE NOVEMBER25 2013/tr

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