

Rahul and Others Vs. Union of India and Others

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Court : Delhi

Decided On : Jul-25-2016

Judge : Pradeep Nandrajog & The Honourable Ms. Justice Pratibha Rani

Appeal No. : W.P.(C) Nos. 6645, 6653, 6654 & 7079 of 2015

Appellant : Rahul and Others

Respondent : Union of India and Others

Judgement :

Pradeep Nandrajog, J.

1. On the strength of being acquitted at the criminal trials, the petitioners question they not being appointed as Constables in the Railway Protection Force.

2. All petitioners successfully cleared the selection process to be appointed as constables in the Railway Protection Force but found employment eluding them when the department found that all of them withheld relevant information concerning their character and antecedents, in that, all of them did not disclose that they were accused of having committed penal offences. All the petitioners were acquitted at the criminal trial and suffice it to note that a criminal record of a person s past history is relevant to assess the person s trustworthiness and in matters relating to public service and especially when the person would carry arms it would be in the interest of the public that the person should be subjected to a

strict scrutiny.

3. The four petitioners have a grievance concerning the same selection process which commenced in the year 2011. Clearing the written examination as also the physical endurance test the petitioners were required to fill in the attestation forms which had a column to disclose whether the candidate was an accused in any FIR or had or was facing a criminal trial and if yes, the particulars thereof. Against the applicable column all the petitioners wrote NO. All of them were given provisional employment requiring them to specifically depose on an affidavit that none of them was ever an accused in any FIR nor had faced a criminal trial. All of them deposed in the affidavit that none of them had ever been named as an accused for having committed any offence and none had faced a criminal trial.

4. But the truth is otherwise. Concededly, petitioner Deepak Kumar, when a juvenile, was named as an accused in FIR No.181/2003 registered at PS Sadar Sonapat on a complaint made by one Sandeep who stated that Deepak and his associates had entered his house and grievously injured him using a knife. The FIR was registered for offences punishable under Section 323/308/452/34 IPC. The juvenile court acquitted him on May 11, 2005 noting that the witnesses had turned hostile and claimed that the police had obtained their signatures on blank papers. The witnesses did not identify Deepak. Even the complainant Sandeep turned hostile. As an adult Deepak was named as an accused in FIR No.220/2007 registered at PS Sadar Distt. Sonapat at the complaint lodged by one Amit for offences punishable under Section 148/149/323/325 IPC. All witnesses were not examined at the trial. Only the complainant was examined who turned hostile resulting in Deepak being acquitted vide judgment dated October 21, 2008.

5. Rahul, the petitioner of WP(C)No.6645/2015 was named as an accused by one Vijay Pal Singh resulting in FIR No.216/2012 PS Gulavathi Distt. Bulandshahar being registered for offences punishable under Section 323/308/452/34 IPC. As per the complainant Rahul along with his associates had entered his house and beaten his son and mother; the latter being grievously hurt. All the witnesses turned hostile resulting in Rahul being acquitted vide judgment dated February 18, 2015.

6. Bhagwan Sahay Meena the petitioner of WP(C)No.7079/2015 was an accused in FIR No.355/2004 PS Bandikui Distt. Dausa for offence punishable under Section 498-A/304-B IPC and in the alternative for the offence punishable under Section 302 IPC concerning death of his wife and infant daughter who had admittedly died being overrun by a train on July 13, 2004. The witnesses of last having seen him walk towards the railway track with his wife and infant female child turned hostile. Even the parents and the brother of the deceased turned hostile on dowry demands and cruelty upon the wife. This resulted in it being a case of no evidence and the prosecution could not prove that Bhagwan Sahay pushed his wife who was holding the infant daughter in her hand on to the railway track when a fast moving train overran the two.

7. Daya Chand Meena the petitioner of WP(C)No.6653/2015 was an accused in FIR NO.100/2005 registered at PS Mahala Thana Distt. Jaipur for offence punishable under Section 363/366/376 IPC on the complaint by the father of the prosecutrix that he had drugged, kidnapped and raped the prosecutrix. He was acquitted vide judgment dated May 26, 2006. The judgment evinces that the prosecutrix in her examination-in-chief fully supported the case of the prosecution but during cross-examination miserably failed to withstand the test of credibility and the evidence which surfaced was that the prosecutrix had willingly gone with him to Himachal Pradesh and had resided with him voluntarily. The prosecutrix admitted that she was literate and had good understanding. She had admitted visiting the market in Una with Daya Chand. She admitted that at Una, Daya Chand used to go to work in a hotel in the morning at 7:00 AM and return in the evening. She admitted that there were people in the neighbourhood.

8. As noted above the four writ petitioners did not truthfully disclose their involvement alleged against them resulting in FIRs being registered. The common case pleaded by all writ petitioners regarding said fact is that since they were acquitted and further that when the advertisement was issued in 2011 no criminal case was pending against them, they thought that they were correctly responding by stating: NO.

9. Said justification by the petitioners is not acceptable to us for the reason in the attestation form vide column 12 the information sought for is not mumbled-jumbled. Vide sub-paras (a) to sub-para (f) of column 12, information asked for is :-

(a) Have you ever been arrested

(b) Have you ever been Prosecuted

(c) Have you ever been kept under detention

(d) Have you ever been bound down

(e) Have you ever been fined by a Court of law

(f) Have you ever been convicted by a Court of Law for any offence

10. In the decision reported as (2010) 10 SCC 169 Kamal Nayan Mishra Vs. State of Madhya Pradesh and Ors. with reference to an earlier decision reported as 2003 (3) SCC 434 Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav recognised that an intentional suppression of a relevant fact while seeking public employment was by itself a misdemeanour and could in an appropriate case be a good reason to either deny employment or terminate employment without inquiry if status of permanent holder of the civil post was not acquired and appointment was given temporarily on the express condition that if any information given in the enrolment form was false, the letter offering employment could be withdrawn and temporary service terminated.

11. Relevant would it be to highlight that in each of the sub-paras of column 12 the word ever has been used. If a person is asked have you ever been prosecuted, the question would make it plain clear that it means that in the past whether the person has been prosecuted. There is just no scope for anyone to urge that the one who read the query concerning the information which was sought could ever think that the current status has to be given.

12. What has happened is obvious. The situation contemplated by the Supreme Court in the decision reported as (2011) 4 SCC 644 Commissioner of Police and

Ors. Vs. Sandeep Kumar was the reason why the petitioners gave false information. It was fear of automatic disqualification which compelled the petitioners to suppress the relevant fact.

13. In Sandeep Kumar s case (supra) the Supreme Court guided that this suppression needs to be overlooked and a lenient view was required to be taken where the offence of which the applicant was charged of was not of a non-serious offence such as murder, dacoity or rape. In said case, Sandeep Kumar was an accused for having committed an offence punishable under Section 325/34 IPC. The offence was of causing grievous hurt. Sandeep Kumar had been acquitted.

14. On the aspect of a person being acquitted at a criminal trial, suffice to state that an acquittal does not necessarily mean that a person is innocent. It means that the prosecution was not able to prove the charge. But nonetheless, a person who is acquitted is entitled to the benefit thereof because he can claim that the presumption of innocence in his favour stands reinforced. However, a mechanical application of this could result in undesirable persons entering the police force, which would be against public interest. In the decision reported as 2013 (7) SCC 685 Commissioner of Police New Delhi Vs. Mehar Singh, in paragraph 35 held as under:-

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by

misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand.

15. The Supreme Court was concerned with two appeals. Mehar Singh had been acquitted at a trial for having committed offences punishable under Section 143, 323, 341 and 420 IPC. The complainant was one Ramji Lal the owner of a bus who had in his complaint. Accused Mehar Singh along with other co-accused challenged the conductor of his bus for charging fare from their associates. The conductor was assaulted so were two interveners Sanjay and Basant. The bus was smashed up. In the other case Shani Kumar had been acquitted at a trial for committing offence punishable under Section 307, 504 and 506 IPC. The injured was the brother of the complainant. The Delhi High Court had granted relief to Mehar Singh and Ramji Lal on the ground that both had been acquitted at the criminal trial. The Supreme Court noted clause 3 of the standing order codifying a policy to appraise candidates for appointment who had cleared the selection process but were found to be acquitted in criminal cases. As per clause 6 those against whom serious offences involving moral turpitude were registered but were acquitted either extending benefit of doubt or because witnesses turned hostile due to fear of reprisal, employment could be denied if the screening committee opined that there was possibility of the witnesses being suborned or there was something which merited rejection. The Supreme Court noted its earlier decision reported as (2013) 1 SCC 598 Dy.Inspector General of Police and Anr. S.Samuthiram, in paragraph 26 whereof the Supreme Court had observed:-

The meaning of the expression honourable acquittal came up for consideration before this Court in Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal

does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions honourable acquittal acquitted of blame fully exonerated are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression honourably acquitted . When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

16. The Supreme Court has recognized the difficulty to define precisely what is meant by an honourable acquittal, but gave one illustration : When the accused was acquitted after full consideration of the prosecution evidence and the prosecution miserably failed to prove the charge. One such illustration could be with reference to the decision of the Supreme Court in the judgment reported as AIR 1999 SC 1416 Captain M.Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. At a domestic inquiry which was ex-parte, Captain M.Paul Anthony was held guilty of stealing gold nuggets and had been dismissed from service. On the same charge he had been acquitted at the criminal trial. The witnesses supported the case of the prosecution and did not resile from their statements recorded during investigation. In other words the prosecution led its best evidence available. On consideration of the entire evidence the Trial Court came to the conclusion that no search was ever conducted at the residence of Captain M.Paul Anthony and no recovery was made. The gold nuggets were planted. Captain M.Paul Anthony was not given the benefit of a higher degree of proof standard placed on the shoulders of the prosecution. He was not given the benefit of any witness turning hostile. The Supreme Court held that Captain M.Paul Anthony s acquittal being honourable and being of a kind which warranted the penalty of dismissal from service to be set aside.

17. In a recent judgment reported as 2015 (2) SCC 377 Jogender Singh Vs. UT of Chandigarh and Anr. wherein Jogender Singh was acquitted at a criminal trial for an offence of constituting an unlawful assembly and causing simple and grievous hurt to person as also attempting to murder a person was held entitled to be appointed as a constable in the Union Territory of Delhi because the acquittal was

on account of the fact that the witnesses could not identify Jogender Singh and claimed that their signatures were obtained on blank sheets. It was in this context that the concept of an honourable acquittal as explained in S.Samuthiram s case (supra) was applied by the Supreme Court.

18. A word needs to be spoken about cases of riots because it does happen that the overzealous police officers do sometimes name even innocent bystanders who are at the place of the rioting after the hoodlums have fled.

19. Witnesses being suborned in India is not unheard of and regrettably of lately has assumed alarming proportions and various decisions of Courts, of which we do not intend to make a catalogue, are replete with a cry to the executive to frame witness protection laws and provide protection to the witnesses. Though relating to an issue of departmental proceedings being initiated against a delinquent government servant who was acquitted at a criminal trial, in the decision reported as (1992) 4 SCC 711 Nelson Motis Vs. UOI the Supreme Court emphasized the nature and scope of the criminal proceedings and reasons for acquittal are material consideration to decide whether departmental proceedings should continue. The decision thus guides that the decision to conclude that the person charged at a criminal trial on being acquitted should be treated as an honourable person is not a mechanist exercise and needs application of mind. Thus, the material gathered by the prosecution during investigation can also be looked at and this would be reflected in the charge sheet.

20. In the decision reported as 2015 (2) SCC 591 State of M.P. and Ors. Vs. Parvez Khan the Supreme Court noted its earlier decisions in Mehar Singh s case (supra) S.Samuthiram s case (supra) and highlighted that a person with a tainted background, if he seeks appointment to a police force should undergo a stricter scrutiny. In para 26 the Supreme Court observed as under:-

In light of the above, we are of the opinion that since the purpose of the departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of

entry of a person in the Police Department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

21. The aforementioned decisions would bring out that if the person is claiming appointment in a police force, nature of the acquittal, the gravity of the offence charged of and the nature of the evidence collected during investigation need to be considered and it is not enough that the prosecution put its best case forward by examining all the material witnesses and failed because its witnesses turned hostile. Such an exercise was carried out by a Division Bench of this Court, of which one of us, Pradeep Nandrajog, J. was a member of when four writ petitions were decided by a common judgment dated April 29, 2013. Two persons were granted relief and two were denied relief. The discussion of the nature of acquittal and the material gathered by the prosecution was discussed. The Division Bench noted with approval the observations made by a Bench of the Central Administrative Tribunal on July 23, 2008 disposing of OA No.178/2008, which observations are very relevant even in the facts of the present case. The observations of the Tribunal which were noted with approval in paragraph 55 by the Division Bench of this Court read as under:-

55. Before passing formal orders we wish to bring on record that as per a decision dated July 23, 2008, disposing of OA No.178/2008, a Division Bench of the Tribunal had correctly noted the manner in which aspects of acquittal have to be dealt with. In paragraph 7, the Tribunal had noted the law and applied the same to the facts of the case before it, and we find the analysis of law to be correct and also the application of facts to the law and if it is believed that peer pressure works better, we quote from the decision of the Tribunal itself for guidance of the successor Benches of the Tribunal as to what the law is and how the same needs to be applied to cases of acquittal. The observations of the Tribunal reads as under:-

We are surprised, rather distressed that even though it has been ordained authoritatively by judicial pronouncement that the nature of offence and the manner of acquittal has to be examined properly, the respondents appear to have ignored both. Denial of appointment to a citizen for all times to come is indeed a serious matter. The same cannot be dealt with so lightly so as not even to consider the attending circumstances leading to commission of crime, nature of offence that may appear from the contents of the first information report, statements of witnesses and the medical evidence. While considering the manner of acquittal, it may not be enough to simply observe that the witnesses had turned hostile, and by simply so observing, to deny appointment to a citizen. 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, as to whether the same is a clean acquittal or acquittal on benefit of doubt, has also to be taken into consideration. To elaborate, insofar as, the nature of offence is concerned, we may mention that some times the facts disclosed in the FIR supported with other material, even if taken to be gospel truth, may not constitute an offence under which an FIR is registered, challan presented and the accused tried. In a case of acquittal, where witnesses have not deposed in tune with the statements made by them before the police, the finding of acquittal is recorded without going into any other aspect of the case. If thus in a given case, the offence with which an accused is charged and tried, may not at all be gone into, his plea that the offence with which he was charged was not made out at all even from reading of the FIR and attending circumstances, has to be gone into at some stage. Making a mention of the offence with which a person might have been charged and put to trial is no way to determine the nature of offence. We are of the considered view that nature of offence is not exclusively determinable only on the label or sections on which an FIR may be registered. With a view to find gravity of offence for which a person may have faced criminal trial, the narration of facts in the FIR, supporting material and the medical evidence is required to be taken into consideration. Insofar as, the manner of acquittal is concerned, once again, the judgment of the criminal court has to be carefully gone into. In a given case, the witnesses may not have deposed in tune with their statements made before the police, but they may not have been declared hostile and cross-examined by public

prosecutor. Such a situation arises when the prosecution witnesses may support the prosecution version to some extent and the public prosecutor may think that to the extent they have supported prosecution version, the finding of conviction can yet to be recorded. He may thus not declare the witnesses to be hostile nor thus cross-examine them. In ultimate analysis, as to whether the accused has been acquitted by giving benefit of doubt or it is a case of clean acquittal, has also to be seen. In the present case, the narration of facts given in the FIR would reveal that four persons, including the applicant gave beatings to Bittoo Singh and Jaipal. Only two, out of four, were put to trial. In the FIR itself, Bittoo Singh appears to have made contradictory statements. In the first instance, he stated that two boys who were armed with dandas were Ajay and Vikas, whereas others had only grappled. He, however, later named the applicant as also one of those who had caused injuries to him. With a view to satisfy ourselves with regard to gravity of offence, we required the counsel representing the parties to produce before us the medico legal report of Bittoo Singh and Jaipal. The same has been made available to us. It appears that Bittoo Singh, the first informant, had received five injuries on his person. Two of the five injuries are swelling of lower wrist and right eye. Even though, two other injuries are of vertex of head and occipital front region, but all the five injuries are simple in nature. Jaipal, the other injured received four injuries, but for injury number (iii) which is one incisor teeth on lower maxilla broken, other injuries are simple in nature. It is only injury number (iii) on the person of Jaipal which can be said to have brought the offence under section 325 IPC. The provisions contained in section 308 IPC may not have been attracted in the facts and circumstances of the present case. We are conscious that we are not here to determine the controversy with regard to nature of offence, but surely, all these aspects were required to be taken into consideration by the concerned authorities in finding out the nature of offence. The situation where the criminal court may record a finding of conviction is entirely different. The concerned authorities in that even would have no choice but for to follow the judgment of the criminal courts, but in a case where the relevant aspects of the case have not even been touched upon, it becomes duty of the high ranking police officers to take them into consideration while dealing with a serious matter like denial of appointment to a citizen. We may reiterate that the Hon ble Delhi High Court in Deepak Kumar and

Others (supra) held that the nature of offence and manner of acquittal has to be gone into properly.

22. It is time to delve into the facts of the case. No doubt all petitioners are guilty of suppressing relevant facts concerning their character, but the possibility of the same being out of fear as was observed by the Supreme Court in Sandeep Kumar s case (supra) cannot be ruled out. Though wilful, such petitioners who were not charged with very serious offences or were falsely implicated need to be treated with compassion.

23. Rahul, who was an accused in FIR No.216/2012 PS Gulavathi Distt. Bulandshahar was alleged to have entered the house of the complainant and giving beating to the son and mother of the complainant along with his associates. The judgment of acquittal brings out that it was a family feud. The complaint shows that the enmity was old. In the complaint it is stated that the accused were carrying lathis, common objects to be found in villages and not a specific weapon of offence. The injured Amit Kumar had suffered an injury on the head which was not a life threatening injury and thus Section 308 IPC was added. The injuries are otherwise simple in nature. Rahul was 19 years of age when the incident happened. The incident took place in a rural area where patriarchal norms compel the youngsters of the family to do what their elder desire. In view of the law declared by the Supreme Court in the various decision above noted and the guiding principles culled out by the Central Administrative Tribunal which were affirmed with approval by a Division Bench of this Court which have been extracted by us in paragraph 21 above, the writ petition filed by Rahul deserves to be allowed. We do so. The order cancelling his appointment dated June 15, 2015 is quashed. He is reinstated in service with all consequential benefits except back wages which are denied to him.

24. Concerning petitioner Daya Chand Meena, we find that he was charged for the offence of abduction and rape. His acquittal is not as a result of the witnesses of the prosecution turning hostile. His acquittal is on account of the fact that the testimony of the prosecutrix brought out the truth of she accompanying Daya Chand voluntarily. The two co-habited together in a residential house where she

was meeting people in the neighbourhood. The prosecutrix had been visiting the market with the accused for shopping. The accused used to go to work in a hotel in the morning and return late evening. The prosecutrix had ample opportunity to inform people in the absence of the accused that she had been kidnapped and had been raped. The judgment brings out that the prosecutrix had eloped with the accused and there was no coercion. The judgment brings out that the parents of the prosecutrix did not accept their daughter having a liaison with the accused. An FIR for the offence of kidnapping had been lodged. The police traced the accused and the prosecutrix. The acquittal is more than honourable. The acquittal brings out the falsity of the case of the prosecution. The antecedents of Daya Chand Meena are thus pure. Even he is entitled to the benefit of the law noted hereinabove. The order discharging him from service dated June 15, 2015 is quashed. He is directed to be reinstated in service with all consequential benefits except back wages which are denied to him.

25. Writ petition filed by Deepak and Bhagwan Sahay Meena are dismissed for the reason Deepak was twice an accused and the acts attributable to him in both complaints are the same, of joining hands with others and causing grievous injuries to the complainant and other persons. Conscious of the fact that when the first FIR was registered he was a juvenile, but when the second was registered he was not. We note that the witnesses turned hostile and the possibility of the witnesses being suborned cannot be ruled out. The injured witnesses wholesomely denied statements made to the Investigating Officer but could not explain how they were injured. The propensity shown by Deepak Kumar is that of a rowdy person who cannot control his emotions and resorts to violence. Such a person is unfit to enter the police force. Bhagwan Sahay Meena has likewise earned an acquittal for a heinous offence because of witnesses turning hostile. Within less than 7 years of marriage his wife and infant daughter were crushed under a moving railway train. The parents and brother of the unfortunate victim who in their complaint made specific allegations of demand of dowry could not have forgotten the dowry demands. These are not incidents which one can wish away in one's life as akin to a person may say that when he was hit it was dark and cannot now for sure say that it was the accused who hit him. The judgment shows that in the complaint, the brother stated that at the time of marriage

jewellery, utensils, cash and motorcycle was given and inspite thereof the sister used to be harassed and tortured. She was not given food and beaten. There was a demand of a colour television and Rs. 1 lakh. The marriage took place on June 11, 2000. A baby girl was born after three years of marriage. On July 13, 2004 the accused took his sister from parental house on the pretext of taking her to Jassinghpura. Relevant would it be to highlight that the deceased and her infant daughter died on the railway track the same day. The case of the prosecution collapsed because the witnesses turned hostile otherwise the logical query would have arisen and the answer would have sealed the fate of Bhagwan Sahay Meena. If he left with his wife and his infant daughter and on the way was the railway track, how come his wife and daughter were crushed under the train? It was a fact in his knowledge which he has to explain. The only answer which he could have given was that whereas his wife who was carrying his daughter was negligent and he was vigilant. But if this be so, his presence at the spot to raise a hue and cry ought to have been there. The decision brings out that as the train hit the woman the driver stopped the train. The guard examined as PW-1 said that the driver of the train confirmed him on wireless that a lady had been hit by a train and therefore he had stopped the train. He got down and walked back and saw the dead body of a lady as also that of a 1 years old girl lying next to the track. Bhagwan Sahay Meena would thus be a person unfit to join the police force.

26. WP(C) No.6654/2015 and WP(C) No.7079/2015 are accordingly dismissed. WP(C) No.6645/2015 and WP(C) No.6653/2015 are allowed as per paragraphs 23 and 24 above.

27. No costs.

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