Narayanankutty Vs. State of Kerala

Narayanankutty Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/725239

Court : Kerala

Decided On : Apr-11-1997

Reported in : (1997)IILLJ429Ker

Judge : C.S. Rajan, J.

Acts : Prevention of Corruption Act - Sections 5(1) and 5(2); Indian Penal Code (IPC) - Sections 120B, 409, 468, 471 and 477A; Evidence Act - Sections 43 - Shedule - Article 311(2); Criminal Law

Appeal No. : O.P. No. 5064/1997

Appellant : Narayanankutty

Respondent : State of Kerala

Advocate for Def. : P.V. Asha, Govt. Pleader

Advocate for Pet/Ap. : P.K. Ashokan, Adv.

Judgement :

C.S. Rajan, J.

1. The petitioner along with four others were charge sheeted by the Vigilance Department under Sections 5(1)(c) and (d) read with Section 5(2) of the Prevention of Corruption Act and under Sections 120B, 409, 468, 471 and 477A of

IPC. The prosecution case was that the accused criminally conspired to misappropriate Government funds, created with intention to cheat, fabrication of false certificates of work towards charge for pulling out seedlings from Social] Forestry Nurseries and by using such forged vouchers as genuine and falsifying the accounts and by committing criminal breach of trust, misappropriated Government money. By Ext.P-2 judgment, the petitioner and others ; were acquitted. In Exhibit P-2 judgment the Criminal Court came to the following conclusion:

'.....Therefore, this is a case where theprosecution was not able to prove that the accused criminally conspired together and the vouchers relied on by them are forged or that they have used those forged vouchers and falsified the accounts or by committing criminal breach of trust misappropriated Government funds'.

On the above findings the court held that the prosecution was not able to prove any of the charges levelled against all or any of the accused.

2. Thereafter, the second respondent issued Ext.P-1 memo of charges along with statement of allegations. The charge against the petitioner is as follows:

'Misappropriated Government money to the tune of Rs. 69,564/76 by making false records and thereby cheated Government derelicted in discharging his official duties honestly and faithfully'.

Sri. P.K. Ashokan, learned counsel for the petitioner made the following submissions: (1) After the Criminal Court acquitted the accused on merit, no disciplinary action can be taken against the petitioner on the same set of facts and evidence; and (2) Initiating disciplinary proceedings long after the occurrence is arbitrary and discriminatory.

3. The delinquent officers have always raised the question of competency of the Government to take disciplinary action after the pronouncement of the Criminal Court acquitting the accused, before this Court as well as before the Apex Court. The earliest and the most important decision in this respect is that of Mathew, J. (as he then was) in Spadigam v. State of Kerala (1970- I-LLJ-718). Analysing the

whole gamut of the question of issue estoppel Justice Mathew dealt with the difference between the standards of proof in a criminal case and in a civil case, and also its applicability to the domestic enquiries as follows: at p 723

'The object of criminal law and its enforcement through criminal proceeding is different from that of disciplinary proceeding. A criminal proceeding is mainly intended to punish persons who have broken 'the King's peace', and thus to show the indignation of the community to criminals whereas disciplinary proceeding is intended to maintain the purity and efficiency of public service. Then again, in a criminal trial, the only evidence admissible is that which is made admissible under the provisions of the Evi-dence Act. A tribunal conducting an enquiry in a disciplinary proceeding is notbound by the strict rules of evidence. Any material which has a logically probative value to prove or disprove the facts in issue is relevant and admissible'.

Lastly, the learned Judge concluded the above discussion with the following observations:

'Therefore, in a disciplinary proceeding, a 3 person can be found guilty of a charge on materials which are inadmissible in evidence in a criminal trial. A judgment of acquittal by a criminal court is inadmissible in a civil suit based on the same cause of action, ex- cept for the very limited purpose mentioned in Section 43 of the Evidence Act. Just as a civil court must independently of the decision of the criminal court investigate facts and come to its own finding, so also, I think, a tribunal; conducting a disciplinary proceeding must investigate the facts and come to its own finding and that without being hampered by the strict rules of evidence. Whether or not it is theoretically right to accord a different: treatment to a judgment of conviction in a disciplinary proceeding involving the same issue in the light of the proviso (a) to Article 311(2), is a matter on which I do not wish to express an opinion now. Even as; regards a judgment of acquittal as the strict rules of Evidence Act are not applicable to a disciplinary proceeding, the judgment might be a relevant piece of evidence, not because the judgment has got any peculiar value but because a tribunal conducting a disciplinary proceeding can take into account any material provided it is logically probative of the facts in issue.'

Learned counsel for the petitioner cited three Supreme Court rulings reported in Prajulla Chandra Mohapatra v. State of Orissa (1993-I-LLJ-171), Sulekh Chand & Salek Chand v. Commr. of Police and Ors. 1994 Supp (3) SCC 674 and State of Punjab v. Chaman Lal Goval (1995-II-LLJ-679). In the Prajulla Chandra Mohapatra's case (supra) the employee was acquitted by the Sessions Court both on merits as well as on technical grounds. Thereafter he was reinstated and retired on attaining the age of superannuation. Thereafter, disciplinary proceedings were initiated based on an observation of the High Court in the case relating to a co. accused. Under these circumstances, the Supreme Court held that the Government was not justified in taking disciplinary action.

4. In Sulekh Chand's case (supra) the petitioner therein was acquitted on merits and the departmental enquiry was also dropped. But thereafter, the DPC superceded him in the matter of promotion on the ground of the earlier prosecution. The Supreme Court did not approve the above action of the DPC in denying promotion on the basis of the prosecution which did not subsist.

5. In Chaman Lal's case (supra) the High Court quashed the charge against the petitioner on the ground that the charge was laid after a long period of 5 1/2 years from the date of the incident. Though the Supreme Court held that the relevant factors have to be balanced and weighed in such cases ultimately the Supreme Court reversed the judgment of the High Court. Thus, it can be seen that the above rulings cited by the learned counsel have no application to the facts of this case. The Supreme Court had occasion to consider the above aspect in the ruling reported in Corporation of Nagpur City, Civil Lines v. Ramachandra (1981-II-LLJ-6). In the above ruling the Supreme Court dealt with the question of acquittal in the criminal case vis-avis departmental enquiry as follows:

'6. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would haveto continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exon-erated of the charges it would not be expedient to continue a departmental inquiry on the

very same charges on grounds of evidence, but the fact remains, however, that merely because the accused is acquitted, thepower of the authority concerned to continue the departmental inquiry is not taken awaynor is its direction in any way fettered. However, as quite some time has elapsed, since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worth while to continue the departmental enquiry in the event of the acquittal of the respondents. If however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so'.

6. In a very recent judgment the Supreme Court has occasion to consider the above aspect again in State of Rajasthan v. Sri. B.K. Meena & Ors. (1997-I-LLJ-746). In the above ruling, the Supreme Court considered the objects of disciplinary proceedings and the criminal trial as follows: at p 751

'.....It must be remembered that interestsof administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanor should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above'.

In para 17 there is yet another reason stated, which reads as follows :

'17. There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.'

The position emerging from the discussion in these decisions is as follows: There cannot be any universal principle that once a criminal court acquits an accused no departmental action is possible thereafter. Even after the acquittal of the delinquent employee it will be open to the departmental authorities to pursue the disciplinary action. This is because the facts of the case may not constitute an offence under the Criminal Law. But the same facts may be termed as misconduct under the Service Rules. Moreover, strict rules of evidence are not applicable to domestic enquiries. At the same time, in a criminal case, strict order of proof is necessary for convicting an accused. In the normal course when an accused is acquitted on merits it would not be proper for the departmental authorities to conduct an enquiry on the very same charges and on the very same evidence. Another factorwhich has to he weighed by (sic) the authorities before proceeding to take action departmentally is the time lag between the incident and the action proposed to be taken. The departmental authorities must definitely take into consideration the fact whether it is really worthwhile to continue the departmental enquiry in the event of the acquittal of the employee.

7. In the light of the above proposition let us analyse the facts of this case. The incident in this case happened way back in 1985. The irregularities were detected in 1987. Vigilance enquiry went on for 7 years. Ultimately, in 1994 the charge was laid. After an extensive trial the criminal court acquitted the accused in 1996. Thereafter, Ext. P-1 memo of charges along with statement of allegations was served on the petitioner. A reading of the charge as well as the statement of allegations will go to show that the present charge is no way different form the charges in the criminal case. The statement of allegations also shows that the same documents which were found untrustworthy by the criminal court are now ruled on to find the petitioner guilty. As held by the Supreme Court, the departmental authorities cannot automatically decide to continue the disciplinary action without going into the different aspects of the case. As indicated earlier, the evidence of the criminal case as well as the evidence to be adduced in the departmental enquiry, the time-lag between the incident and the present action, the sufficiency of evidence and good ground to proceed with the departmental action are all to be considered independently before taking further action. Such a consideration is visibly absent in this case.

8. Therefore, the only course open for this Court now is to direct the second respondent to consider these aspects before proceeding further pursuance to Ext.P-l charge in order to see whether it is really worthwhile to continue the departmental enquiry in the event of acquittal of the petitioner. It is important to point out that three other accused, who were acquitted by the criminal court retired from service and no action was taken against them. These are matters for the second respondent to consider. Therefore, the second respondent is directed to consider these aspects and pass orders taking into consideration the observation made in this judgment and in accordance with law. This must be done within 3 months from the date of receipt of acopy of this judgment.

Original Petition is disposed of as indicated above.