

ibrahim Kannu Vs. State of Kerala

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Court : Kerala

Decided On : Oct-28-2005

Reported in : 2005(4)KLT1034

Judge : K.S. Radhakrishnan and; K.T. Sankaran, JJ.

Acts : Negotiable Instruments Act - Sections 133, 138 and 142; ;Code of Criminal Procedure (CrPC) - Sections 357(3); ;Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 - Rules 15, 16, 17 and 18; ;[Constitution of India](#) - Article 311 and 311(2)

Appeal No. : W.P. (C) No. 3368 of 2005

Appellant : ibrahim Kannu

Respondent : State of Kerala

Advocate for Def. : P.V. Lonachan, Government Pleader

Advocate for Pet/Ap. : Pirappancode V.S. Sudhir, Adv.

Disposition : Petition allowed

Judgement :

K.S. Radhakrishnan, J.

1. Removal of a government servant from service on the ground of conviction for an offence punishable under Section 138 of the Negotiable Instruments Act be not sustained for the reason that it is not an offence involving moral turpitude is the question that has been referred to us for consideration.

2. Learned Judge referred this case expressing some doubts with regard to the correctness or otherwise of the reasoning of another learned Judge of this Court in OP.No. 10336 of 2002. Petitioner in this case challenges Ext.P3 order of dismissal dated 13-12-2004 placing reliance on the judgment in OP.10336 of 2002. Learned single Judge felt that there cannot be a blanket declaration of law that the disciplinary authority shall not impose the penalty of dismissal or removal from service or any other major penalty on the sole ground that the conviction was for an offence punishable under Section 138 of the Negotiable Instruments Act. Learned single Judge pointed out neither Article 311 of the [Constitution of India](#) nor Rule 18 of the K.C.S. (C.C. & A) Rules speaks about 'moral turpitude' and those provisions do not classify offences as those involving moral turpitude and those not involving moral turpitude. Learned single Judge pointed out that what is provided in Rule 18 of the K.C.S. (CC &A;) Rules, 1960 is that circumstances of the case shall be taken into account and therefore a wide proposition that the disciplinary authority is not legally entitled to impose penalty of dismissal or removal from service or any other major penalty on the sole ground that the conviction was for an offence punishable under Section 138 of the Act is an over statement of law.

3. Petitioner was accused in S.T. 134 of 2001. He had borrowed a sum of Rs. 60,000/- from the complainant and issued a cheque for the same on 19-5-2001. Complainant had presented the cheque for encashment which was bounced, which led the filing of a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act. Criminal court found that the petitioner was guilty of the offence and sentenced to undergo simple imprisonment for a period of six months and to pay Rs. 60,000/- as compensation to the complainant under Section 357(3) of the Code of Criminal Procedure. Later order dated 13-12-2004 was passed by the second respondent dismissing the petitioner from service since he was convicted by the criminal court, the legality of which is under challenge in

this Writ Petition.

4. Counsel appearing for the writ petitioner Sri. V.S. Sudheer placing reliance on a Division Bench judgment of this Court reported in *Saseendran Nair v. General Manager*, 1996 (2) KLT 432 contended that the act of issuing a cheque without sufficient funds is not generally regarded as morally wrong or corrupt and that the offence under Section 138 would not normally involve moral turpitude. Counsel also placed reliance on the decision of this Court in *State of Kerala v. Mohanan*, 2000 (1) KLT 129 and contended that the impugned order is illegal due to violation of principles of natural justice since he was not given an opportunity to file objections against the order of dismissal.

5. Learned Government Pleader tried to sustain the order stating that as per sub-Clause (a) of the second proviso to Clause (2) of Article 311 of the [Constitution of India](#) no notice is to be served or no opportunity of being heard be given where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Further counsel also submitted that if a government servant is convicted by a criminal court it is always open to the department to dismiss him or remove him from service or to impose any other punishment, for which no opportunity of being heard need be given.

6. Article 311 of the [Constitution of India](#) deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Article 311(2) states that no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Second proviso to Article 311(2) however stipulates that where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. Proviso (2)(a) to Article 311 therefore makes it clear that an officer who was convicted on a criminal charge is liable to dismissal without any further proceeding under Article 311(2). It includes conviction under any law which provides for punishment for a criminal offence. Article 311 does not make any

distinction between crimes involving moral turpitude and other crimes or statutory offences.

7. The Supreme Court in *Union of India v. Tulsiram Patel*, : (1985) IILLJ206SC and in *Deputy Director of Collegiate Education (Admn.), Madras*, : [1995] 2SCR308 has taken the view that the charge in the criminal case must relate to a misconduct of such magnitude as would have deserved the penalty of dismissal, removal or reduction in rank. Apex Court in *Sankar Dass v. Union of India*, : (1985) IILLJ184SC and in *Divisional Personal Officer, Southern Railway v. Challappan T.R.* : (1976) ILLJ68SC held that the proviso to Article 311 is merely an enabling provision and does not enjoin the disciplinary authority to impose the extreme penalty of dismissal in every case of conviction for trivial offences or technical offences involving 'moral turpitude'. Since punishment is grave the authority must consider whether, in view of the conviction, what penalty, if at all, should be imposed on the delinquent employee. Authority, evidently, will have to take into account the entire conduct of the employee, the gravity of the misconduct committed by him; the impact which his misconduct is likely to have on the administration, and other extenuating circumstances. Rule 18 of the Kerala Civil Services (Classification, Control and Appeal) Rules 1960 provides that where a penalty is imposed on a government servant on the ground of conduct which had led to his conviction on a criminal charge, the procedure prescribed in Rule 15, 16 and 17 of the aforesaid Rules need not be followed. Rule 18 further says that the disciplinary authority may consider the circumstances of the case and pass such orders thereon as he deems fit. Rule 18 of the Kerala Civil Services (C.C. & A) Rules, 1960 provides that before imposing penalty, the disciplinary authority has to consider the circumstances of the case. Neither Article 311 of the [Constitution of India](#) nor Rule 18 of the K.C.S. (CC & A) Rules speaks about 'moral turpitude'. Article 311 and Rule 18 would not confer any arbitrary power on the disciplinary authority, but before imposing punishment necessarily they have to take into consideration all relevant circumstances.

8. Division Bench of this Court in *Saseendran 's case* (supra) has only stated that the act of issuing a cheque without sufficient funds is not generally regarded as morally wrong or corrupt and that the offence under Section 133 will not normally

involve moral turpitude. Holding so, the court held as follows:.

'We approve the said principle and hold that the question whether an offence would involve moral turpitude has to be decided on the facts of each case. All offences do not necessarily involve moral turpitude. Section 138 of the Act is no exception to the said principle. On the facts of the case, we find no scope for holding that the offence found against the appellant has any reflection of moral turpitude.'

We also notice that while affirming the judgment in OP. 10336 of 2002 the Division Bench in K.S.R.T.C. v. Abdul Latheef, 2005 (3) KLT 955 held as follows:

'Even if there was conviction, under Rule 18 of the Rules, it was incumbent on the appointing authority to consider the circumstances as to the misconduct which lead to the conviction and to pass appropriate orders. Every cases of conviction shall not result in dismissal.

When the requirement in Section 138 of the Negotiable Instruments Act is satisfied, one will be deemed to have committed offence. It is only a deeming provision. Offence under Section 138 of the Act being an offence in the commercial practice cannot be taken as one involving moral turpitude, in the absence of any other cogent material to discern moral turpitude. No such special-circumstance is pointed out by the appellant. In such circumstances also the direction to reinstate the first respondent cannot be said to be unjustified.'

We therefore notice that while affirming the judgment in OP.103 36 of 2002 the Division Bench has also held that offence under Section 138 of the Act being an offence in the commercial practice cannot be taken as one involving moral turpitude in the absence of any other cogent material to discern moral turpitude. We therefore find that the Division Bench has not fully supported the view expressed by the learned single Judge in OP. 10336 of 2002.

9. We are of the view, the reasoning of the learned single Judge that a government servant cannot be removed or dismissed from service for the sole reason that he has been found guilty under Section 138 of the Act is an over

statement of law. In our view it would depend upon several factors including conduct of the employee, gravity of the misconduct, the impact of the misconduct on the administration and other extenuating circumstances. Further reasoning of the learned single Judge that a conviction in a case for an offence punishable under Section 138 cannot be treated as moral turpitude or as a blot on the character or conduct of an employee disentitling him to continue in the service of the Government is also not a correct proposition of law. We reiterate that would depend upon facts and circumstances of each case.

10. Further we may add, so far as this case is concerned the authorities have not applied their mind as to whether this is a fit case warranting dismissal of the petitioner from service. Counsel submitted that the petitioner was not given an opportunity of being heard before dismissing him from service and there was no application of mind by the authorities while passing Ext.P3 order which goes contrary to the dictum laid down by the Division Bench in Mohanan's case (supra). Under such circumstance we set aside Ext.P3 order and direct the second respondent to reconsider the question as to whether the conviction ordered by the criminal court under Section 138 of the Negotiable Instruments Act would warrant dismissal of petitioner from service. Second respondent would pass fresh orders with notice to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

Writ Petition is therefore allowed as above and the question referred is answered accordingly.

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