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Marimuthu Vs. the State Rep. by

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Court : Chennai

Decided On : Jan-10-2013

Judge : M.Venugopal

Appellant : Marimuthu

Respondent : The State Rep. by

Judgement :
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

10. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.VENUGOPAL CRL.R.C.(MD)No.10 of 2013 Marimuthu ... Petitioner Vs The State rep. by The Inspector of Police Uthamapalayam Police Station, Theni District. (in Crime No.312 of 2011) ... Respondent PRAYER Criminal Revision Petition filed under Sections 397 read with and 401 (1) of Cr.P.C., to call for the entire records relating to the judgment dated 02.11.2012 made in S.T.C.No.219 of 2012 on the file of Judicial Magistrate Court, Uthamapalayam and expunge the remark of granting benefit of doubt and to hold it as honorary acquittal for the petitioner. !For Petitioner ... Mr.R.Gandhi for M/s.Ajmal Associates ^For Respondent ... Mr.P.Kandasamy, GA (Criminal Side) :ORDER The Petitioner/A6 has filed the instant Criminal Revision Petition before this Court as against the Judgment dated 02/11/2012 in S.T.C.No.219 of 2012 passed by the Learned Judicial Magistrate, Uthamapalayam. Further, he has prayed for expunging the observation made by the trial Court, while acquitting him based on 'benefit of doubt'. Consequently, in this Revision Petition, the Petitioner has sought relief of passing of an order of

'Honorary Acquittal' by this Court to secure the ends of justice. 2.The Learned Judicial Magistrate, Uthamapalayam, while passing the judgment in S.T.C.No.219 of 2012 dated 02.11.2012 has among other things observed that P.W.1 and other eye witnesses to the occurrence viz., P.Ws.2 and 3 have turned hostile and also their evidence is against the prosecution case and further, the other independent witnesses have not spoken against all the Accused (7 in no. including the Petitioner/A6) and has come to a consequent conclusion that the prosecution has not established its case against the Petitioner/Accused and other Accused beyond all reasonable doubt and acquitted the Petitioner/Accused and other Accused under Section 255(1) Cr.P.C. 3.The Learned counsel for the Petitioner/A6 strenuously contends that the Revision Petitioner has passed 10th standard and he has qualified for appointment to the post of Grade II Police Constable and that in the year 2012, selection for the post of Grade II Police Constable, he has performed well in written test and also in physical efficiency test and in all, he secured 68% marks in aggregate and has been selected for the appointment to the post of Grade II Police Constable, pursuant to the notification advertisement No.112 issued by the Tamil Nadu Uniformed Service Recruitment Board. However, when the Petitioner has been expecting the order of appointment, the Superintendent of Police, Theni District has rejected his appointment based on the reason, that he has been involved in a criminal case in S.T.C.No.219 of 2012 on the file of the Learned Judicial Magistrate, Uthamapalayam. 4.The main ground of attack projected by the Learned counsel for the Petitioner/A6 before this Court is that though the Petitioner/A6 has been acquitted by the trial Court giving him the 'benefit of doubt', the same operates as a stigma affecting his future employment prospects and in spite of acquittal, he cannot join in any Government Service. Therefore, the Petitioner has been perforced to project the Criminal Revision Petition praying for the relief of 'Honorary Acquittal'. 5.At this stage, this Court points out that in the order in Crl.R.C.(MD) No.1002 of 2008 dated 13/7/2010 between V.NAVANEETHAKRISHNAN Vs. THE STATE, THROUGH, THE INSPECTOR OF POLICE, SANKARANKOVIL POLICE STATION, TIRUNELVELI DISTRICT, wherein at paragraph No.5, it is observed hereunder'- "5. The learned counsel for the petitioner in support of his contention, would place reliance upon a decision of this Court in Crl.R.C.No.289 of 2008, Somasundaram Vs. The State,

dated 28.02.2008, wherein after referring and following a decision of this Court, expunging the findings leading to acquittal of the petitioner, concluded that the petitioner has to be acquitted honourably. A Division Bench decision followed by the learned Judge reported in 2005 (5) CTC - 672 (The Deputy Superintendent of Police, Sriperumbudur Sub-Division, I/c. Chengalpattu Sub-Division, Kancheepuram District Vs. W.D.Sekaran and another is as follows:- "In the light of our discussion, it is clear that it is not axiomatic that in all cases where the criminal proceedings based on the very same set of facts ended in acquittal, the departmental action should not be proceeded with. As rightly observed by the earlier Division Bench of this Court in State of Tamil Nadu Vs. H.A.Munaf and another, 2002 (3) LLJ 66.cited supra, if the acquittal in the criminal proceedings is not a honourable one, it is always open to proceed with the departmental proceedings. The Tribunal has not gone into the above relevant aspects and committed an error in quashing the charge memo at the threshold." 6.The aforesaid decision in Somasundram's case has been later followed by this Court in Crl.R.C.No.400 of 2008 (Kasinathan Vs. The State through the Sub- Inspector of Police, Checkanurani Police Station, Madurai District) dated 27.08.2008 whereby and whereunder, it is held as follows:- "7. On a perusal of entire records and the judgment of the trial Court, this Court could not find any material against the petitioner. These circumstances of this case warrant expunging of findings available in the trial Court judgment as to the granting benefit of doubt for acquittal of this petitioner. In consonance with the earlier view of this Court in this regard and as to the circumstances available in this case, I am of the considered view that the petitioner has to be acquitted honourably and acquitted as such. The findings of the Court below as regards acquittal on the ground of benefit of doubt stands expunged. The revision deserves to be allowed and it is accordingly allowed." 7.At this stage, this Court aptly points out the decision of the Honourable Supreme Court in COMMISSIONER OF POLICE AND OTHERS VS. SANDEEP KUMAR {(2011) 4 Supreme Court Cases 644 at 645 to 647, wherein in paragraphy Nos.9 to 12, it is observed as under: "9.In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel Les Miserables, in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern

approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book Due Process of Law. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed: "I come now to Mr Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the Judge to show-and to show to all students everywhere-that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land-and I speak both for England and Wales-they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down. But now what is to be done? The law has been vindicated by the sentences which the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards-of the poets and the singers-more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong-very wrong-in going to the extreme they did. But, that having

been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." (Vide Morris v. Crown Office, QB at p. 125C-H.) In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter. 8.At this juncture, this Court aptly points out that the Criminal Procedure Code refers to the word 'Acquittal' under Sections 232, 235, 248, 255 and 300. Moreover, the word 'discharge' is used under Sections 227, 239 and 245 of the Criminal Procedure Code. Section 227 of the Criminal Procedure Code enjoins a Court of Session to discharge an accused if upon consideration of the record of the case and the documents submitted, it considers that there is no sufficient ground for proceeding against the Accused. In fact, Section 232 of the Criminal Procedure Code, visualise a Court of Session to order acquittal of a person, if after taking the evidence for prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence to show that the Accused committed the offence. The 'Discharge Order' as per Section 227 of the Criminal Procedure Code may be passed by the concerned Court prior to the recording of evidence and the acquittal as per Section 232 of the Criminal Procedure Code may be passed after the evidence for the prosecution is adduced and recorded. 9.Likewise, Section 239 of the Criminal Procedure Code enables the Learned Judicial Magistrate to discharge the Accused, if after taking into account the Police Report and the documents transmitted along with it as per Section 173 of the Criminal Procedure Code, he opines that the charge against the Accused to be a futile one. In regard to the case instituted otherwise than on Police Report, the Learned Judicial Magistrate is entitled to discharge the

Accused, if after taking all the evidence as is referred to in section 244, he considers that no case against the Accused has been made out. In regard to acquittal specified under Sections 248 and 255 of the Criminal Procedure Code by a Magistrate in a warrant or summons case, the same is only after trial. 10.Therefore, it is clear that the Code of Criminal Procedure, 1973 speaks of 'Acquittal' and not as 'Honorary Acquittal' or Acquittal on 'Benefit of Doubt'. Admittedly, these concepts have been evolved/developed by Courts of Law due to lapse of time. The main reason as to why the Criminal Procedure Code has not made a difference/distinction between an Acquittal on 'Benefit of Doubt' and 'Honorary Acquittal' is to ensure that no person shall be tried for a second time for the same offence for which he is tried and convicted and acquitted once. No wonder, the concept of acquittal is an acquittal is a development of the principle of 'Double Jeopardy', as per ingredients of Section 300 (1) of the Criminal Procedure Code, as opined by this Court. 11.At this stage, this Court worth recalls the decision HAFIZUDDIN INAYATULLAH KAZI Vs. J.C.AGARWAL AND OTHERS reported in 1980 (Vol.41) INDIAN FACTORIES AND LABOUR REPORTS - 171, wherein at page 172, it is held as follows:- "It is very difficult to define what is the meaning of the word, 'honourable acquittal'. In my view it will depend on the fact and circumstances of each case as to whether a person can be said to have been discharged or acquitted honourably or not. In my view, though it is very difficult to define precisely what is meant by the words 'honourably acquitted', it is safe to say that if an accused is acquitted or discharged because of some technicality not having been complied with or on the ground that though there is some evidence against him, he must be acquitted by giving benefit of doubt, it may not amount to an honourable acquittal. However, if an accused is acquitted after full consideration of evidence because the prosecution witnesses were disbelieved and the prosecution had miserably failed to prove the charges it would amount to honourable acquittal. It is difficult to understand what more is required for honourable acquittal of the accused than acquittal of the accused on disbelieving the prosecution evidence in toto. In the present case, though there are some observations made at the end of the judgment by the High Court acquitting the petitioner which may appear to be ambiguous, if the judgment is read as a whole, there can be little doubt that the accused was acquitted not by giving benefit of

doubt, in spite of there being some evidence against him, but because the prosecution failed to prove the case against him. In the instant case the judgment clearly acquits the accused not on some technical ground or not because there was evidence both ways but the evidence of prosecution being found slightly wanting, the benefit of doubt was given to petitioner. The judgment clearly establishes that the prosecution had miserably failed to establish the case against accused No.3, the petitioner and if this is not honourable acquittal, it is difficult to say what can be said to be the honourable acquittal. The decision, if any, arrived in the facts of such a judgment cannot be said to be reasonable and therefore, cannot be said to be bona fide and it discloses non-application of mind. (1972 S.L.R. 44 and (1934) 61 I.L.R Cal.168 Followed." 12.This Court worth recalls the decision of the Honourable Supreme Court in STATE OF ASSAM AND ANOTHER Vs. RAGHAVA RAJGOPALACHARI reported in 1972 SLR - 44 at special page 47, wherein in paragraph 9, it is held as under:- "9. It seems to us that if on reading judgment and order which acquits as government servant it appears to the government or the competent authority that the government servant has not been fully exonerated of the charge levied (sic) to come to the conclusion that clause (b) would apply and not clause (a). This conclusion is strengthened by the wide discretion given to the competent authority under clause (b). Acting under clause (b) the competent authority is entitled to give if the circumstances so warrant, the whole of the pay and allowances and also treat the whole of the period of absence from duty as period spent on duty." 13. Further, in paragraphs 10 to 13, it is held as follows:- "10. In this particular case if one reads the judgment of this Court is K.R.CHARI Vs. STATE OF UTTAR PRADESH (supra) {1963 (1) SCR - 121}, it seems that the Government was entitled to come to the conclusion that the petitioner had not been honourably acquitted within the meaning of clause (a). This Court held that in the absence of valid sanction the charges against the petitioner under Section 161 and Section 165 could not have been tried and that it rendered the proceedings against the petitioner in respect of these two charges without jurisdiction. Accordingly his trial in respect of these two offences was held to be invalid and without jurisdiction. Regarding the charge under Section 467 this Court held that the High Court erred in law in making a finding against the petitioner in respect of the charge under Section 467 as well as the alternative

charge under the relevant Defence of India Rules because the finding the High Court on the essential part of the prosecution story in respect of the charge under Section 467 really rested on the evidence of the accomplice uncorroborated by any other evidence. This Court then considered the question as to whether a retrial of the petitioner for the offence under Section 161 should be ordered. In this connection, this Court refused to order a retrial because of the following reasons:- "Two facts have weighed in our minds in coming to the conclusion that a retrial need not be ordered in this case. The first consideration is that the accused has had to face a long and protracted criminal trial and the sword has been hanging over his head for 14 years. The accused was suspended in 1947 and since then these proceedings have gone on all the time. The second factor which has weighed in our minds is that though the prosecution began with a charge of a comprehensive conspiracy supported by several instances of bribery, on the finding of the High Court it is reduced to a case of bribery offered by two persons, and then again the substantial evidence is the evidence of accomplices supported by what the High Court thought to be corroborating circumstances. Accordingly, we hold that is is clause (b) that applies.

11. There was some argument before us as to the interpretation of the word 'otherwise' occurring in clause (b). It seems to us that the word "otherwise" means, in the context 'in cases not covered by Cl (a)".

12. If Clause (b) applies we can find no defect in the order of the Government dated January 28, 1964. It was for the Government to consider what proportion of pay and allowances should be given and what period of absence from duty should be treated as period spent on duty.

13. The learned counsel for the State sought to argue before us that the date '16th March 1954' occurring in the order dated January 28, 1964, was mentioned due to mistake and the proper date which should have been mentioned was the date of superannuation, namely, June 30, 1953. He says that the order dated Jul

1953. continuing the services of the petitioner after the date of superannuation was bad in view of the ruling of this Court in State of Assam Vs. Padma Ram Borth AIR 196.SC 473.But we are unable to appreciate how he is entitled to raise the

point. The Writ was brought to challenge this order. No such petition, even if it be competent, was filed by the State itself. The respondent to a Writ Petition cannot be allowed to attack its own order as a respondent." 14.Apart from the above, in the decision THE DEPUTY SUPERINTENDENT OF POLICE, SRIPERUMBUDUR SUB-DIVISION, I/C. CHENGALPATTU SUB-DIVISION, KANCHIPURAM DISTRICT Vs. W.D.SEKARAN AND ANOTHER {2006 (5) CTC - 672 (DB), it is inter alia held that "It is not axiomatic that in all cases where criminal proceedings based on very same set of facts ended in acquittal, departmental action should not be proceeded with." Further, it is also held that "If acquittal is not a honourable one, it is always open to employer to proceed with departmental proceedings." 15. In the decision D.MAHADEVAN Vs. DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI 4 {(2008) 4 MLJ - 88}, it is held that "By virtue of Rule 13 (b) of the Tamil Nadu Police Subordinate Service Rules, a person involved in a criminal case shall not be treated as involved in the criminal case if he had honourable acquittal". 16.In this connection, this Court to makes a significant useful reference to Rule 14 (b) of the Tamil Nadu Special Police Subordinate Service Rules, 1978, which reads thus:- "14 (b). No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority. (i). that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service; and (ii). that his character and antecedents are such as to qualify him for such service; and (iii). that such a person does not have more than one wife living. Explanation: (1) A person who is acquitted or discharged on benefit of doubt or due to the fact that the complainant "turned hostile" shall be treated as person involved in a criminal case. Explanation: (2) A person involved in a criminal case at the time of police verification and the case yet to be disposed of and subsequently ended in honourable acquittal or treated as mistake of fact shall be treated as not involved in a criminal case and he can claim right for appointment only by participating in the next recruitment." 17. A reading of the aforesaid Rule shows that a person who is acquitted or discharged on 'Benefit of Doubt' or due to the fact that the Complainant has turned hostile shall be treated as one who is involved in a criminal case. It cannot be denied that many persons might have been roped in/implicated in criminal cases and finally acquitted by the trial Court will have to undergo the ordeal when they have been

acquitted on the basis of showering of 'Benefit of Doubt' awarded by the trial Court and that operates as a stigma undoubtedly on them. Their reasonable and genuine apprehension of stigma/scar affecting their future prospects/future endeavours in seeking employment etc., are not to brushed aside in the considered opinion of this Court. Only, in this backdrop, the Revision Petitioner has approached this Court seeking the relief of modifying the order of acquittal into that of 'Honorary Acquittal'. 18.In any event, it is for the authorities/Employer while recruiting/appointing a candidate for a certain post in a service to take into account of the past or present conduct and to act as per prevailing Rules and Regulations.

19. In the decision of Honourable Supreme Court MANAGEMENT OF RESERVE BANK OF INDIA, NEW DELHI Vs. BHOPAL SINGH PANCHAL {(1994) 1 SUPREME COURT CASES - 541}, wherein at special page No.542, it is held as follows: "When the High Court acquitted the respondent-employee giving benefit of doubt, the bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46 (4)." 20. This Court has also heard the Learned Government Advocate (Criminal Side). 21.In the instant case on hand, the trial Court in judgment in S.T.C.No.219 of 2012 dated 02.11.2012 has come to a categorical conclusion that P.Ws.1 to 3 have turned hostile and only on the basis of the evidence of P.W.4, it cannot be accepted that the prosecution has established the charges against the Petitioner/Accused No.6 and other Accused. Further, the trial Court has also opined that no independing witnesses have also deposed against the Petitioner/A6 and other Accused, resultantly, it has held that the prosecution has not established the case against the Petitioner/A6 and other Accused beyond reasonable doubt and acquitted the Petitioner/A6 and other Accused under Section 255(1) of Cr.P.C., holding that the charges under Sections 147, 294(b), 323 and 506(2) of I.P.C. have not been established. 22.Be that as it may, the fact remains that the Petitioner/A6 has been acquitted by the trial Court in S.T.C.No.219 of 2012 based on the reason of 'benefit of doubt' being granted to him, on the footing that the prosecution has not established the charges levelled against him and other Accused. The acquittal of the Petitioner/A6 based on 'benefit of doubt' (about which we are concerned in this revision), in the considered opinion of this Court, it is to be construed as one of 'Honorary Acquittal'. Viewed in that backdrop, the Criminal Revision Petition

succeeds. 23.Resultantly, the finding rendered by the trial Court in so far as the Petitioner/A6 is concerned that the acquittal of the charges levelled against him based on 'benefit of doubt' is modified to the effect that he shall stand acquitted 'Honorably. Also, before parting from the case, this Court fervently hopes that the Petitioner will exhibit exemplary conduct beyond reproach by turning a new leaf in his future career. arul To 1. The Inspector of Police Uthamapalayam Police Station, Theni District.

2. The Judicial Magistrate, Urhamapalayam

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