

A THE STATE OF RAJASTHAN & ORS.

v.

LOVE KUSH MEENA

(Civil Appeal No. 3894 of 2020)

B MARCH 24, 2021

[SANJAY KISHAN KAUL AND R. SUBHASH REDDY, JJ.]

- Service Law: Appointment for post of constable – Disqualification for appointment – Advertisement provided for C disqualification clause that only those candidates would be qualified to appear who have not been convicted for offence of moral turpitude, violent activities and not honourably acquitted by court – Respondent-candidate was found ineligible since in a criminal case under ss.302, 323, 341, 34 IPC, he was not acquitted honourably but was acquitted on benefit of doubt – High Court D held in favour of respondent – Appeal by employer-State – Held: The mere fact of an acquittal would not suffice but rather it would depend on whether it was a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been E met, benefit of doubt has been granted to the accused – No doubt, in that case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent was not of a mere bystander – The attack with knives was alleged against all the other co-accused including the respondent – During trial, a compromise was entered with F complainant in favour of accused persons under ss.341, 323 IPC – However, since no compromise was possible for offence under s.302, trial continued – The prosecution witnesses having turned hostile, prosecution failed to prove case against the accused persons beyond reasonable doubt and accused were granted benefit of doubt G resulting in their acquittal – This cannot fall under the category of a clean acquittal and the trial court was thus right in using the terminology of benefit of doubt in respect of such acquittal – Thus, respondent was rightly held not eligible to appointment – Penal Code, 1860 – ss.302, 323, 341 – Criminal jurisprudence – Benefit of doubt.*

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Words and Phrases: Expression “honourable acquittal” – A Meaning of.

Allowing the appeal, the Court

HELD: This is a clear case where the endeavour was to settle the dispute, *albeit* not with the job in mind. This is obvious from the recital in the judgment of the Trial Court that the compoundable offences were first compounded during trial but since the offence under Section 302/34 IPC could not be compounded, the Trial Court continued and *qua* those offences the witnesses turned hostile. This cannot fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.
[Para 24][1201-D-E]

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Avtar Singh v. Union of India & Ors.(2016) 8 SCC 471:[2016] 7 SCR 445 – relied on.

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Union Territory, Chandigarh Administration & Ors. v. Pradeep Kumar & Anr. (2018) 1 SCC 797 : [2018] 1 SCR 112; Inspector General of Police v. S. Samuthiram (2013) 1 SCC 598 : [2012] 11 SCR 174; State of Madhya Pradesh & Ors. v. Abhijit Singh Pawar (2018) 18 SCC 733 : [2018] 13 SCR 1133; Commissioner of Police v Mehar Singh (2013) 7 SCC 685:[2013] 13 SCR 432; Anil Bharadwaj v. High Court of Madhya Pradesh & Ors. 2020 SCC Online SC 832; Joginder Singh v. State (UT of Chandigarh & Ors. (2015) 2 SCC 377 : [2014] 11 SCR 155; Mohammed Imran v. State of Maharashtra & Ors. 2019 (17) SCC 696 – referred to.

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Case Law Reference

[2016] 7 SCR 445	relied on	Para 13	
[2018] 1 SCR 112	referred to	Para 15	G
[2012] 11 SCR 174	referred to	Para 15	
[2018] 13 SCR 1133	referred to	Para 16	

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- A [2013] 13 SCR 432 referred to **Para 16**
[2014] 11 SCR 155 referred to **Para 18**
2019 (17) SCC 696 referred to **Para 19**
- CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3894
of 2020
- B From the Judgment and Order dated 16.07.2019 of the High Court of Judicature for Rajasthan at Jodhpur in Civil Special Appeal (Writ) No. 373 of 2019.
Vidhan Vyas, Ms. Pragati Neekhra, Advs. for the Appellants.
- C Ms. Shobha Gupta, Ms. Medha Garg, Advs. for the Respondent
The Judgment of the Court was delivered by
SANJAY KISHAN KAUL, J.
- D 1. The moot point which arises for consideration is whether a benefit of doubt resulting in acquittal of the respondent in a case charged under Sections 302, 323, 341/34 of the Indian Penal Code [IPC] can create an opportunity for the respondent to join as a constable in the Rajasthan Police service.
- E 2. The respondent and three others were charged with the aforesaid provisions of the Indian Penal Code and tried before the Additional Sessions Judge (Fast Track), Laxman Garh, District Alwar, Rajasthan. The incident relates to 6.10.2008 at about 6 p.m. when, as per the complainant Babulal, one Jagdish and Dayaram came in a tractor for tilling a disputed field in jungle Patan. Tofli, mausi of Babulal forbade them to till the land and apparently stayed back in the field. At that time,
- F the tractor driver Jagdish drove the tractor and ran over Tofli. The complainant Babulal along with one Raju, Om Prakash and Dinesh rushed to her side but were beaten up and knife injuries were inflicted upon them by Dayaram, Love Kush (respondent), Bodan and Jagdish. Tofli was taken in a *Buggi* to the hospital where the doctor declared her brought dead. On the basis of the said report, PS Khedli registered Case
- G No.255 of 2008 under Sections 302, 341, 323, 34 of the IPC and commenced the investigation. Upon completion of the investigation, the charge sheet against all the accused persons vide No.1/2009 was filed in the Court of Judicial Magistrate, Kathumar from where it was committed to the Court of the Additional Sessions Judge, Laxman Garh.
- H The charges were framed and all the accused denied the charges.

3. It is relevant to note that during the trial injured persons, Babulal, Om Prakash and Raju alias Rajesh obtained permission of the Court and filed a compromise in favour of accused persons under Sections 341,323 of IPC which was approved but naturally, there could not have been any compromise *qua* the offences under Section 302/34 IPC. In those charges the trial continued and it is quite obvious that in view of the compromise, all the prosecution witnesses, including those injured, turned hostile. On the basis of the case of the prosecution, the learned Judge opined in terms of the judgment dated 01.05.2009 that “*the prosecution had failed to prove the case against the accused persons beyond reasonable doubt*”.

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4. A notification for recruitment of constable was issued on 14.07.2013 under the provisions contained in part III of the Rajasthan Police Subordinate Service Regulations, 1989 for 12178 posts of constables setting out the procedure for making the application. Para (ix) of the advertisement provided for disqualification for appointment. The relevant clause (ix) reads as under-

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“(ix) As per judgment of Hon’ble Supreme Court in Civil Appeal No.782/2004 State Government and others v. Mohd. Salim Dated 10.12.2009, Director General Police, Rajasthan Circular No.1687 dt.29.4.1995 is held legal. In compliance with the said judgment, only those candidates shall be qualified to appear in recruitment for Rajasthan police who- have not been convicted for offence of moral turpitude, violent activities and not honourably acquitted by Court.”

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5. The aforesaid would show that the disqualification would operate *qua* conviction and “*not honourably acquitted by Court*” for offences of moral turpitude and violent activities. The respondent herein participated in the same and it appears was successful in the recruitment process. However, a letter dated 04.08.2015 was issued to him on the basis of character antecedent verifications carried out by the Police Superintendent. District Alwar, Dy. Inspector General Police, Security, Rajasthan, Jaipur, whereupon the aspect of the aforesaid case was looked into (it is an accepted position that the respondent had disclosed this fact and there was no concealment). The respondent was found not eligible in view of the aforesaid. The operative portion reads as under:

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“Due to serious criminal offence against you, police headquarter in reference to circular No.1687 dated 29.4.1995 and also in

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- A compliance with the orders of Hon'ble Supreme Court in Civil Appeal No.782/04, you are not being appointed as not found eligible".
- B 6. The aforesaid order was assailed before the Rajasthan High Court in S.B. Civil Writ Petition No.2391/2016 and the Writ Petition was allowed in terms of the judgment dated 11.11.2016, remitting the matter back to the respondent- Superintendent of Police, Udaipur for passing a fresh appropriate order with regard to the candidature of the respondent in accordance with law within a period of three months from the date of receipt of the order and consequences would follow.
- C 7. Accordingly, fresh orders were passed by the District Police Superintendent, Udaipur on 23.05.2017. It was opined that the charges against the respondent were not of a trivial nature but were serious offences and the candidate was not acquitted by the Court honourably. In view of the circular in question, once again the respondent was held ineligible.
- D 8. The second round began with assailing of the aforesaid order dated 23.05.2017 in S.B. Civil Writ Petition No.8323/2017. In terms of the order of the learned Single Judge dated 14.05.2018, it was opined that the Court was not convinced that the authority had applied its mind in accordance with the directions given by the Court vide order dated
- E 11.11.2016. In this behalf, reliance was placed on a circular dated 28.03.2017 and it was found that the respondent is falling in the first category.
- F 9. We may notice that the circular is undisputedly post the recruitment process. Be that as it may, the relevant portion of the circular reads as under:
- “Subject: Regarding the candidates deprived of appointment due to concealment of facts of criminal cases/being involved in criminal cases.
- xxx XXXXXXXXX
- G Only those candidates of the following category are found to be eligible to be appointed, who have mentioned the criminal case in the application form or character verification form (both or one of them):-
- H 1. Found not guilty of criminal case after investigation, Final/closure Report submitted for approval.

2. Acquitted by the Court (including by giving benefit of doubt or want of evidence). A

3. Acquitted/discharged on the basis of compromise.

4. Given benefit of Section 12 of the Probation of Offenders Act, on conviction in certain sections (the conviction is not based on any impunity/no adverse effect on state service/future life). B

5. Convicted and given benefit of Section 15(1)(a) of Juvenile Justice Act.”

10. It is the say of the learned counsel for the respondent that the aforesaid circular is applicable and in terms of the said circular even cases where the acquittal is by giving benefit of doubt would not disqualify a candidate. C

11. The appellant/State aggrieved by the aforesaid order preferred an D.B.Special Appeal Writ No.373/2019 before the Division Bench. The Division Bench opined that since no cogent evidence connecting the accused person to commission of offence was found, the respondent was not disentitled for appointment to the post of a constable, notwithstanding his involvement in a criminal case. It further opined that since the benefit of doubt was given to the respondent and that aspect was considered in the earlier judgment of the learned single Judge dated 11.11.2016, the said aspect cannot be looked into. With this, the appeal stood dismissed. E

12. In the present appeal post issuance of notice, leave was granted on 27.11.2020 and the interim order passed on 03.02.2020 staying the operation of the impugned order was made absolute. Learned counsel for the parties have taken us through the aforesaid factual matrix as already penned down by us. The question which arises is whether in the aforesaid factual matrix and taking into consideration various judicial pronouncements of this Court, would the respondent be disentitled to appointment i.e. whether the subsequent speaking order passed by the appellant authority dated 23.05.2017 is liable to be interfered with or not. F

13. Learned counsel for the appellant has referred to the seminal judgment in *Avtar Singh v. Union of India & Ors.*¹ where a three Judge Bench of this Court has in detail dealt with the aspects arising from such cases and laid down various parameters. Conclusions are summarized in para 38. G

¹(2016) 8 SCC 471 H

A 14. It would suffice to reproduce the relevant summarized conclusion as under:

“38.XXX XXX XXX

B 38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

C 38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.”

D 15. It is pointed out that various nuances arising in this judgment has been considering even in the subsequent judgments. In *Union Territory, Chandigarh Administration & Ors. v. Pradeep Kumar & Anr.*² a two Judge Bench of this Court dealt with the expression “honourable acquittal”. It was opined that acquittal in a criminal case was not conclusive for suitability of the candidate concerned and it could not always be inferred from an acquittal or discharge that the person was falsely involved or has no criminal antecedents. Thus, unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. E No doubt, it was mentioned by relying on the earlier judgment of this Court in *Inspector General of Police v. S. Samuthiram*³ that while it was difficult to define precisely what is meant by the expression “honourable acquittal”, an accused who is acquitted after full consideration of the prosecution evidence and prosecution has miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. In this context, it has been specifically noticed by this Court that entry into the police service required a candidate to be of good character, integrity and clean antecedents. Finally, it was opined that the acquittal in a criminal case G does not automatically entitle a candidate for appointment to the post, as a person having criminal antecedents will not fit in this category.

F 16. In a similar factual scenario to the extent of recruitment to the posts of Subedars, Platoon Commandants and Inspectors of Police in

H ²(2018) 1 SCC 797
³(2013) 1 SCC 598

pursuance to an advertisement and disqualification of one of the candidates being assailed resulted in a judgment of this Court in *State of Madhya Pradesh & Ors. v. Abhijit Singh Pawar*⁴ by a two Judge Bench. Suffice to say, in the factual context, a case registered in the year 2006 was pending on the date when affidavit was tendered and within four days the compromise was entered into between the original complainant and the respondent. An application for compounding was filed. The compounding was found to be permissible as it dealt with offences under Sections 294, 325/34, 323, 506 Part II of the IPC and on discussion of the legal principle enunciated in the earlier judgments, it was opined that the earlier judgment in the case of *Commissioner of Police v Mehar Singh*⁵ it was opined that there is no doubt about the proposition that even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedent and suitability of the candidate. In this context, it was held, the employer is entitled to take into account the job profile for which the selection is undertaken, the severity of the charge levelled against the candidate and whether acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt as a result of composition. We may also add that one aspect which was noticed which is common with the present case is the absence of any suggestion that the decision was actuated by *malafide* or suffered on other accounts except the issue raised of the subsequent circular applicable.

17. A reference was also made to *Anil Bharadwaj v. High Court of Madhya Pradesh & Ors.*⁶ where once again a two Judge Bench of this Court found that a criminal case against the candidate under Sections 498A, 406, 34 of the IPC was pending consideration on a complaint filed by the wife and thus, the rejection of candidature could not be said to be unsustainable. While saying so, the Court also opined that the plea that the deletion of the name would result in stigma against the candidate was not sustainable since the candidate already stood acquitted.

18. On the other hand, learned counsel for the respondent sought to distinguish some of the judgments on the factual matrix while also referring to certain other pronouncements. In this behalf, she referred to the judgment in *Inspector General of Police v. S. Samuthiram* (supra)

⁴(2018) 18 SCC 733

⁵(2013) 7 SCC 685

⁶2020 SCC Online SC 832

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- A expounding as to what is meant by “*honourable acquittal*” in para 24 to contend that it is difficult to define precisely what is meant by the expression “*honourable acquittal*”. Counsel also sought to make a reference to a judgment in *Joginder Singh v. State (UT of Chandigarh & Ors.)*⁷. The charges against the candidate in this case were under Sections 148, 149, 323, 325 and 307 of IPC where it was held by the Trial Court that the prosecution had miserably failed to prove charges levelled against him since the complainant as well as injured eyewitnesses failed to identify the assailants. It was opined to be a case of honourable acquittal and thus, relief was granted to the candidate.
 - C 19. The respondent also referred to a judgment of this Court in *Mohammed Imran v. State of Maharashtra & Ors.*⁸ decided on 12.10.2018 where the candidate had been charged under Sections 363, 366, 34, IPC much prior to the clearance of examination. In that context, it was observed that since employment opportunity were a scarce commodity in our country, with large numbers of aspirants applying, there could not be any mechanical or rhetorical incantation of moral turpitude to deny appointment in judicial service simplicitor but much would depend on the facts of a case.
 - E 20. In the instant case the aspect of there being a time lapse between the alleged offence and the recruitment process was emphasised to contend that the respondent herein was about 19 years of age when the incident occurred and had now carried his life further by being successful in a competitive examination some years down the line.
 - F 21. A reference was also made in the counter affidavit to certain judgments of the Rajasthan High Court granting relief to the candidates based on acquittal obtained on benefit of doubt.
 - G 22. Lastly, a reference was made of an order passed by this Court in SLP[C]No.15351/2020 dated 21.01.2020 wherein an SLP was dismissed against a direction for appointment of a candidate where the order was giving benefit of doubt to the candidates in a criminal case. We may, however, note that firstly, that this is an order and not a judgment and secondly, it has been clearly stated that the dismissal was “*in the given facts and circumstances of the case*”.
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- H ⁷(2015) 2 SCC 377
H ⁸Civil Appeal No.10571/2018

23. Examining the controversy in the present case in the conspectus of the aforesaid legal position, what is important to note is the fact that the view of this Court has depended on the nature of offence charged and the result of the same. The mere fact of an acquittal would not suffice but rather it would depend on whether it is a clean acquittal based on total absence of evidence or in the criminal jurisprudence requiring the case to be proved beyond reasonable doubt, that parameter having not been met, benefit of doubt has been granted to the accused. No doubt, in that facts of the present case, the person who ran the tractor over the deceased lady was one of the other co-accused but the role assigned to the others including the respondent herein was not of a mere bystander or being present at site. The attack with knives was alleged against all the other co-accused including the respondent.

24. We may also notice this is a clear case where the endeavour was to settle the dispute, *albeit* not with the job in mind. This is obvious from the recital in the judgment of the Trial Court that the compoundable offences were first compounded during trial but since the offence under Section 302/34 IPC could not be compounded, the Trial Court continued and *qua* those offences the witnesses turned hostile. We are of the view that this can hardly fall under the category of a clean acquittal and the Judge was thus right in using the terminology of benefit of doubt in respect of such acquittal.

25. The judgment in *Avtar Singh's* case (supra) on the relevant parameter extracted aforesaid clearly stipulates that where in respect of a heinous or serious nature of crime the acquittal is based on a benefit of reasonable doubt, that cannot make the candidate eligible.

26. We may also note the submission of learned counsel for the respondent that as per para 38.3 in *Avtar Singh's* case (supra), the employer has to take into consideration the Government orders/instructions/rules applicable to the employee at the time of taking a decision. It is her say that the issue whether the circular dated 28.03.2017 would apply or not was *res integra* in view of the earlier order of the learned Judge dated 14.05.2018. She has further contended that, in any case, the circular had come into force and as per the judgment in *Avtar Singh's* case (supra) para 38.4, it is the date of decision which is material and as on the date of decision dated 23.05.2017, the said circular was applicable.

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- A 27. We may note here that the circular dated 28.03.2017 is undoubtedly very wide in its application. It seeks to give the benefit to candidates including those acquitted by the Court by giving benefit of doubt. However, such circular has to be read in the context of the judicial pronouncements and when this Court has repeatedly opined that giving benefit of doubt would not entitle candidate for appointment, despite the circular, the impugned decision of the competent authority dated 23.05.2017 cannot be said to suffer from infirmity as being in violation of the circular when it is in conformity with the law laid down by this Court.
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- C 28. We are, thus, of the view that the impugned orders cannot be sustained and the appellants are well within their rights to have issued the order dated 23.05.2017.

29. The consequence is that the appeal is allowed and the impugned judgment of the Division Bench dated 16.07.2019 and learned Single Judge dated 14.05.2018 are set aside leaving the parties to bear their own costs.

Devika Gujral

Appeal allowed.