

A THE STATE OF RAJASTHAN & ORS.

v.

PHOOL SINGH

(Civil Appeal No. 5930 of 2022)

B SEPTEMBER 02, 2022

[S. RAVINDRA BHAT AND SUDHANSU DHULIA, JJ.]

Service Law – Penal Code, 1860 – s.392 – Arms Act – ss.3/25

- Respondent-delinquent employee's dismissal from service was quashed by High Court on the ground that he was acquitted by criminal court on the same set of facts and charges on which he faced departmental proceeding, directed reinstatement in service – Correctness of – Held: A departmental proceeding is different from a criminal proceeding – A delinquent employee after his dismissal from service, nevertheless, seeks reinstatement when he is acquitted by a criminal court on the same set of charges and facts – Merely because a person has been acquitted in a criminal trial, he cannot be ipso facto reinstated in service when found guilty in a departmental proceeding – In the present case, High Court erred in interfering with the order of the Disciplinary Authority and placing reliance on Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. reported as [1999] 2 SCR 257 – It is the Disciplinary Authority which is best equipped to reach a finding whether a "misconduct" has been committed – The prime concern of a Judge should be whether such a finding has been arrived after following a fair procedure, the principles of natural justice and fairness – Further, Capt. M. Paul Anthony case must be appreciated for its unique facts and it does not lay down a law of universal application – Also, in the instant case, the respondent was convicted by the Trial Court and in appeal the Appellate Court only acquitted him by giving him a benefit of doubt – Thus, the acquittal of the respondent was not an honourable acquittal, but an acquittal given due to benefit of doubt – Order of Single Judge and Division Bench of High Court set aside – Police Act – s. 34.*

Service Law – Departmental proceeding vis-à-vis criminal proceeding – Held: Both are different – The fundamental difference between the two is that whereas in a departmental proceeding a

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delinquent employee can be held guilty on the basis of “preponderance of probabilities”, in a criminal court the prosecution has to prove its case “beyond reasonable doubt” – Difference between the two proceedings would lie in the nature of evidence and the degree of its scrutiny – The two forums therefore run at different levels.

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Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. (1999) 3 SCC 679 : [1999] 2 SCR 257 – distinguished.

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Union of India v. Sitaram Mishra (2019) 20 SCC 588 : [2019] 9 SCR 585; Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd. (2005) 7 SCC 764 : [2005] 3 Suppl. SCR 314; State of Rajasthan v. Heem Singh (2020) SCC OnLine SC 886 – relied on.

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Case Law Reference

[1999] 2 SCR 257	distinguished	Para 9	D
[2019] 9 SCR 585	relied on	Para 11	
[2005] 3 Suppl. SCR 314	relied on	Para 11	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5930 of 2022.

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From the Judgment and Order dated 09.09.2020 of the High Court of Judicature for Rajasthan at Jaipur in D.B. Special Appeal (Writ) No. 1274 of 2014.

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Vishal Meghwal, Milind Kumar, Advs. for the Appellants.
Vikas Verma, Ms. Sapna Verma, Shafik Ahmed, V. Elanchezhiyan, Advs. for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU DHULIA, J.

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1. Leave granted. The State of Rajasthan is in appeal before this Court against the order dated 09.09.2020, passed by a Division Bench of Rajasthan High Court (Jaipur Bench). By the impugned order the Division Bench has upheld the order of the learned Single Judge which had allowed the writ petition of the present respondent, quashing his dismissal from service.

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- A 2. Respondent Phool Singh had entered Rajasthan Police Service as a constable, in the year 1987. The same year, while he was posted at the Police Station Mania, District Dholpur (Rajasthan), he allegedly committed a criminal offence, apart from an act of gross indiscipline. On the fateful day of 15.10.1987, he was wandering around the town in the evening, in company of one Lokman. Respondent was off duty but in police uniform, when he allegedly caught one Mahesh Kumar and demanded Rs.100/- from him. On his refusal, Mahesh Kumar was asked to show the papers of his motorcycle and when he failed to show these papers, Phool Singh took hold of this motorcycle, and then tried to run away with it. Meanwhile, due to the alarm raised by Mahesh Kumar a crowd also gathers in support of Mahesh Kumar. At this point, Phool Singh is alleged to have waved a gun ("Pachpera"), towards the crowd but was nevertheless chased by the crowd, till Phool Singh succeeds in getting inside his house, which was nearby. Once inside his house, he fires from his gun which injures the inmates of the house, i.e., his family members, besides damaging the property. All this results in lodging of an FIR (No. 146/1987) against the respondent, at Police Station Mania, under Sections 392, 307 IPC and Section 34 of Police Act read with Section 3/25 of Arms Act. After investigation in the case a chargesheet was filed against Phool Singh and Lokman. Ultimately charges were framed under Section 392 IPC and Section 3/25 of the Arms Act by the Trial Court. The Trial Court then convicts Phool Singh, under Section 392 IPC and Section 3/25 Arms Act and sentences him for one-year rigorous imprisonment and fine for each of the above two offences, with default stipulations, vide order dated 31.03.1994. The co-accused Lokman is acquitted. This order was challenged by Phool Singh in appeal and the learned Sessions Judge, Dholpur, allows the appeal, and sets aside the order of the Trial Court, giving "benefit of doubt" to the accused.

3. Meanwhile, a departmental proceeding had also been initiated against the delinquent constable on three charges, which are as follows:-

- G "**CHARGE NO.1 :-** In the year 1987 when on 15.10.87 you, Shri Phool Singh Constable No.386 was deputed with Police Station Mania at that time while off duty as Guard time at around 3:00 PM dressed in police uniform you had consumed alcohol and under the influence of alcohol being highly intoxicated continued to roam around in Kasba Mania and snatched away licensed Pachpcra (rifle) of Shivram Kachhi.
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CHARGE NO.2:- On 15.10.87, you in a drunken state dressed in uniform alongwith Lokman Gurjar went to Bedia Kasba Mohalla where being off duty and without any authority you demanded for documents pertaining to Rajdoot Motorcycle from Mahesh Kumar S/o Shiv Hare Brahmin R/o Patpara Dholpur and also indecently abused and demanded for a bribe of Rs.100/- and forcibly looted and took away Motorcycle bearing registration No.RJD 7722 from Mahesh Kumar and due to which a lot of people gathered and they chased behind you.

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CHARGE NO. 3:- On being chased by public you ran and reached your quarter in the compound of Police Station Mania and in a drunk state fired in your self-defence inside your house from the Pachpera snatched away by you from Shiv Ram but the gunshot hit the balcony in the chowk of the quarter and as a result broken pieces of balcony fell on your family members and due to which your family members got injured and the said incident led to the registration of FIR No.146 dated 15.10.87 against you u/s 392, 307/34 of Police Act & 3/25 of Arms Act thereafter investigation was conducted.”

In the departmental enquiry fourteen prosecution witnesses were examined. Some of these witnesses supported the case of the prosecution, others did not. Additionally, material exhibits were also examined such as, the first information report, the memorandum of seizure of the motorcycle and more importantly the Breath Alcohol Analysis Test of respondent which was positive for alcohol consumption. The delinquent constable had also examined nine defence witnesses.

All the three charges were ultimately proved against the respondent in the disciplinary proceedings and he was dismissed from service, vide order dated 18.12.1989. This order of the disciplinary authority was taken in appeal by respondent which was also dismissed by the Appellate Authority on 23.08.1990. Then a review was also filed, which was also dismissed on 03.06.1994. By the time the Reviewing Authority had dismissed the review of the respondent (i.e., on 03.06.1994), the respondent who was also facing a criminal trial was convicted by the Trial court, under Section 392 IPC and under Section 3/ 25 of the Arms Act, on 31.03.1994, as already referred above. Later, as we know, his conviction was set aside by the Sessions Court.

- A 4. Respondent Phool Singh after his acquittal moves an application before the authorities for his reinstatement. Since the authorities did not respond favourably, he filed a writ petition in the year 1998 before a learned Single Judge of Rajasthan High Court. The challenge of his dismissal from service though was made only after his acquittal in the criminal case, yet the challenge was on various other grounds as well, such as the order of termination not being passed by the appointing authority, non-supply of inquiry report, not being allowed to cross examine the witness, etc. All these grounds did not find favour with the learned Single Judge, except for the ground raised by the respondent that now since he has faced a criminal trial on the same set of charges, where he was ultimately acquitted by the Sessions Court, his dismissal order is liable to be quashed and he should be reinstated in service. The learned Single Judge allowed his writ petition and his dismissal order was quashed and orders for his reinstatement were made with 50% back wages. State of Rajasthan filed an appeal against this order before Division Bench of the High Court which was dismissed on 09.09.2020. The State is now before this Court against the order of reinstatement passed by the Rajasthan High Court.
- B 5. We must reiterate that the High Court of Rajasthan, both in the writ petition and special appeal had allowed the case of respondent, Phool Singh only on the ground, that now since he has been acquitted by a criminal court, on the same set of facts and charges on which he had faced a departmental proceeding, the orders passed in departmental proceedings are liable to be quashed and he must be reinstated in service. As we have already referred above, none of the other arguments raised on behalf of the private respondent challenging procedural anomalies in the departmental proceedings, violation of principles of natural justice and fair play or lack of jurisdiction of the authority, had found favour with either the learned Single Judge or the Division Bench.
- C 6. The case of the State, who is the appellant before this Court is that the respondent was a member of a disciplined force. There were extremely serious charges against the respondent in the departmental proceedings. He was charged of threatening and extorting money from a member of public, roaming in a public place under influence of liquor, and then using a fire arm and causing injuries, which were all very serious charges. Respondent was given full opportunity to defend his case in the departmental proceedings. He was given the opportunity to cross-
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examine the prosecution witnesses and in fact, he also presented nine defence witnesses who were examined in the departmental proceedings. The disciplinary authority concluded that the delinquent constable (respondent) had committed an act of gross indiscipline and negligence, as well as dereliction of duties and of misbehavior and misconduct, and all this had tarnished the image of Rajasthan Police in public. Under the circumstances, the delinquent officer cannot be retained in Police service and was thus dismissed from service with immediate effect. The State would also argue that the acquittal by the criminal court is of no consequence, as far as departmental proceedings are concerned.

7. The question before this Court is therefore only to see whether the respondent can be reinstated in service for the reason that now on the same set of charges he has been acquitted by a criminal court?

8. There should be no ambiguity in law on this subject. A departmental proceeding is different from a criminal proceeding. The fundamental difference between the two is that whereas in a departmental proceeding a delinquent employee can be held guilty on the basis of “preponderance of probabilities”, in a criminal court the prosecution has to prove its case “beyond reasonable doubt”. In short, the difference between the two proceedings would lie in the nature of evidence and the degree of its scrutiny. The two forums therefore run at different levels. For this reason, this Court has consistently held that merely because a person has been acquitted in a criminal trial, he cannot be *ipso facto* reinstated in service.

9. Be that as it may, a delinquent employee after his dismissal from service, nevertheless, seeks reinstatement when he is acquitted by a criminal court on the same set of charges and facts. A very heavy reliance is then placed on a decision of this Court given in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.**¹ Reliance was placed on this decision by the present respondent as well, before the learned Single Judge, as well as before the Division Bench of Rajasthan High Court. Both the courts have relied on this judgment while giving their decision in favour of the respondent. In **Capt. M. Paul Anthony**, this Court had indeed held that as the petitioner before them had been acquitted on the same set of charges by a criminal court, he should be reinstated in service, though he was dismissed from service after facing

¹(1999) 3 SCC 679

- A a departmental proceeding. But then the case of **Capt. M. Paul Anthony** must be appreciated in the background of its unique facts.
10. Capt. M. Paul Anthony was working in the year 1985 as a ‘Security Officer’ with ‘Bharat Gold Mines Ltd.’, which was engaged in the mining of gold in the Kolar Gold mines in Karnataka. On 02.06.1985
- B a raid was conducted by the Superintendent of Police at the residence of Capt. M. Paul Anthony (whom we should refer here also as the ‘petitioner’), from where a sponge gold ball weighing 4.5 grams and 1276 grams of ‘gold bearing sand’ were recovered. He was immediately suspended from his services and the same day an F.I.R. was registered.
- C The next day petitioner received a charge sheet and hence departmental proceedings were also initiated against him. The petitioner then moved an application before his disciplinary authorities praying that the departmental proceedings be stayed till the conclusion of the criminal proceedings, but his request was turned down. Meanwhile he returned to his home State of Kerala and requested for an adjournment of the
- D disciplinary proceedings. This request was also turned down. The departmental proceedings went *ex parte* against the petitioner where he was found guilty of misconduct. On 07.06.1986 petitioner was dismissed from service. During his entire period of suspension, he was not given any subsistence allowance.
- E On 03.02.1987 Capt. M. Paul Anthony was acquitted in the criminal trial, on the grounds that the prosecution had failed to establish its case, particularly the police raid on which the entire case was based. The petitioner, immediately after his acquittal, placed a copy of the judgment of the criminal court before his departmental authorities and prayed for his reinstatement. This was denied and consequently the
- F petitioner filed a departmental appeal which was also dismissed. He then approached the High Court of Karnataka, where his writ petition was allowed by the Court and his reinstatement was ordered on the ground that on the same set of charges, the petitioner has been acquitted by a criminal court and hence he must be reinstated in service. The
- G State filed a special appeal before the Division Bench which was allowed and the order of the learned Single Judge was set aside. The petitioner (Capt. M. Paul Anthony) then challenged the order of the Division Bench of the Karnataka High Court before this Court.
- H There were two factors which weighed with the Supreme Court, while deciding that case. The first was the admitted fact that the petitioner

was not given any subsistence allowance during his period of suspension and therefore, he was not in a position to face the departmental proceedings in Karnataka while he was residing in Kerala. The second aspect was that the petitioner was being charged on the same set of facts in the two proceedings and therefore, he had made request to the departmental authorities to stay the departmental proceedings till the conclusion of the criminal case, a request which was denied. This aspect seems to be the most important factor weighing in the mind of this Court, as this Court was of the opinion that the charges, (both in the criminal court and with the department), involved a complicated question of fact and law, relating to the “raid” made by the police, and therefore the departmental proceedings should have been stayed and it should have awaited the result of the criminal proceedings. It was in the raid made by the Police that the ‘Gold sponge ball’ and ‘Gold bearing sand’ were allegedly recovered from his residence. This factum of “raid and recovery” which was the fulcrum of the case, stood disproved. Under these circumstances, it was held that the petitioner was liable to be reinstated. **Capt. M. Paul Anthony** thus must be appreciated for its unique facts and to our mind it does not lay down a law of universal application.

11. We say this because as against **Capt. M. Paul Anthony**, we have a large number of cases where this Court has consistently held that the two proceedings, i.e., criminal and departmental, are entirely different and merely because one has been acquitted in a criminal trial that itself will not result in the reinstatement in service when one has been found guilty in a departmental proceeding. We may refer to a few of these decisions.

In the case of **Union of India v. Sitaram Mishra**², a constable in Central Reserve Police Force (CRPF) was charged for being negligent and careless and therefore, was removed from service. The facts of the case were that the constable while removing the magazine of his 9mm carbine gun, accidentally fired eight rounds which resulted in the death of one constable who was at the relevant time in the same barrack. The constable was held guilty of misconduct in the disciplinary proceedings and was dismissed from service. Meanwhile the constable was also tried for the offence under Section 304 of IPC in a criminal trial where he was acquitted. He thereafter filed a writ petition before the High

²(2019) 20 SCC 588

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- A Court challenging his dismissal from service. The writ petition was dismissed but later on an appeal before a Division Bench, the order of the learned Single Judge was set aside and it was ordered that since the constable by that time had been acquitted in the criminal court, he is liable to be reinstated in service and since by that time he had retired
- B from service, he was to be treated in service with directions that he be given back wages and pension. This Court while deciding the appeal filed by the Union of India came to the conclusion that the grounds which weighed with the High Court were specious, and merely because the employee was acquitted by the criminal court it does not mean, *ipso-facto* that he is entitled to be reinstated in service, since he was dismissed
- C from service after facing a disciplinary proceeding. The reason being that the disciplinary proceedings are governed by a different standard of proof, which are different from what is applied in a criminal proceeding. Whereas, in a criminal trial the burden lies on the prosecution to establish the charge beyond reasonable doubt and in a departmental proceeding, the charges have to be proved on the basis of preponderance of probabilities.

- In the above case a distinction has also been drawn by this Court between a “criminal offence” and “misconduct”. One has to be proved in a criminal court, the other in a departmental proceeding, and though both may arise from the same set of facts, yet there is a clear distinction
- E between the two and merely because one has been acquitted in a criminal trial, it would not amount to a reversal of the findings of “misconduct”, which were arrived in a departmental proceeding. This Court also observed that the High Court fell into an error in doing exactly this, which was done by drawing an ‘erroneous inference’ from the decision of this Court
 - F given in **Capt. M. Paul Anthony**. We must therefore, reproduce here the two paragraphs from the judgment of this Court in **Sitaram Mishra** (*supra*) :-

- G “14. The fact that the first respondent was acquitted in the course of the criminal trial cannot operate *ipso facto* as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The High Court, in our view, has drawn an erroneous inference from the decision of this Court in *M. Paul Anthony v. Bharat Gold Mines Ltd.* [*M. Paul Anthony v. Bharat Gold Mines Ltd.*, (1999) 3 SCC 679 : 1999 SCC (L&S) 810]. The High Court adverted to the following
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principle of law laid down in the above judgment: (SCC p. 687, A para 13)

“13....While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

15. It is undoubtedly correct that the charge in the criminal trial arose from the death of a co-employee in the course of the incident resulting from the firing of a bullet which took place from the weapon which was assigned to the first respondent as a member of the Force. But the charge of misconduct is on the ground of the negligence of the first respondent in handling his weapon and his failure to comply with the departmental instructions in regard to the manner in which the weapon should be handled. Consequently, the acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the disciplinary enquiry. Hence, having regard to the parameters that govern the exercise of judicial review in disciplinary matters, we are of the view that the judgment [*Sitaram Mishra v. Union of India*, 2007 SCC OnLine Cal 718 : (2008) 1 Cal LJ 863] of the Division Bench of the High Court is unsustainable.”

A three Judge Bench of this Court in **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corp. Ltd.**³ held the position of law, was explained as follows :-

“11..... In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating

³(2005) 7 SCC 764

- A statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused ‘beyond reasonable doubt’, he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of ‘preponderance of probability’.....”
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12. Thus, in the present case, the learned Single Judge as well as the Division Bench of Rajasthan High Court were clearly wrong in interfering with the order of the Disciplinary Authority of the Rajasthan Police and placing their reliance on **Capt. M. Paul Anthony**. It is the Disciplinary Authority which is best equipped to reach a finding whether a “misconduct” has been committed. The prime concern of a Judge should be whether such a finding has been arrived after following a fair procedure, following the principles of natural justice and fairness. This aspect has been underlined in a recent judgment of this Court (**State of Rajasthan v. Heem Singh⁴**). The relevant para is reproduced as hereunder:-
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- “39. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial
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H ⁴(2020) SCC OnLine SC 886

proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.”

It is true that this Court, apart from the case of **Capt. M. Paul Anthony**, has in a few cases not interfered with the reinstatement of an employee who was dismissed as a result of disciplinary proceedings, and was only reinstated in service because of his acquittal in criminal proceedings, but again the reasons which weighed with the Court in such cases were that in almost in all such cases, the acquittal was an honourable acquittal and not an acquittal on a technicality, or on acquittal given because of “benefit of doubt”.

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- A 13. In the case at hand, respondent was convicted by the Trial Court and in appeal the Appellate Court only acquitted him by giving him a “benefit of doubt”. The operative part of order dated 26.11.1994 of the Appellate Authority reads as under: -
- B “Hence, on the basis of aforesaid analysis the present appeal on behalf of the appellant accused against the respondent/ prosecution is allowed and the judgment and sentence dated 21.3.94 passed by the Subordinate Court of Munsif & Judicial Magistrate Dholpur is hereby quashed and the above appellant/accused Phool Singh is acquitted for the charge u/s 392 IPC & u/s 3/25 of Arms Act by giving benefit of doubt.”
- C 14. Therefore, in the present case the acquittal of the respondent is not an honourable acquittal, but an acquittal given due to a “benefit of doubt”. Under these circumstances and in view of the position of law as stated above, this appeal is allowed and the order dated 29.01.2014 of the learned Single Judge and the order dated 09.09.2020 of the Division Bench of Rajasthan High Court, Jaipur Bench are hereby set aside.
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Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.