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ANIL BHARDWAJ

v.

THE HON'BLE HIGH COURT OF
MADHYA PRADESH & ORS.

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(Civil Appeal No. 3419 of 2020)

OCTOBER 13, 2020

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

- Service Law – Judicial Service – The appellant was selected for the post of District Judge (Entry Level) – In his online application, the appellant had mentioned that one FIR u/s. 498/406/34 was pending against him – On 14.09.2018, an order was issued which declared the appellant ineligible and his name was deleted from the select list for the said post – A writ petition was filed by the appellant challenging the order dated 14.09.2018 – It was disclosed under the Right to Information Act that the joint meeting of Administrative Committee (Higher Judicial Service) and Examination-cum-Selection and Appointment Committee dated 18.07.2018 had considered appellant not suitable for being appointed – Meanwhile, the appellant was acquitted of the charge framed against him vide judgment dated 18.09.2019 – The appellant withdrew his earlier writ petition and filed a fresh writ petition incorporating subsequent events, facts and acquittal order – The said writ petition was dismissed by the High Court – Before the Supreme Court, the appellant contended that his subsequent acquittal should have been reconsidered by the High Court and the High Court committed an error in not considering the appellant for appointment – It was further contended that as per paragraph 6(viii) of the guidelines issued by the State on the subject 'regarding issuing of new guidelines for character verification', the candidate will be eligible for Government Service as appellant has been acquitted – Held: There is no dispute that on the date when the Committee declared the appellant unsuitable, criminal case against him u/s. 498A and 406 IPC was pending which was registered on a complaint filed by the appellant's wife – The mere inclusion in the select list does not give an indefeasible right to a candidate – The employer has right to refuse appointment to the candidate included in the*

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select list or any valid ground – The persons who occupy judicial service of the State are persons who are expected to have impeccable character and conduct – The decision of the Committee was well within the jurisdiction and power of the Committee and cannot be said to be unsustainable – There was no infirmity in the decision taken by the Committee – The High Court did not commit any error in dismissing the writ petition – The fact that subsequently the appellant was acquitted in the criminal case did not furnish sufficient ground for reconsidering the appellant for appointment on the post – As far as the paragraph 6(viii) of the guidelines is concerned, the same cannot come to the rescue of the appellant since at the time of character verification the appellant had not been acquitted and he was acquitted after more than a year from rejection of his candidature – Thus, the appellant was not entitled for any relief in the writ petition.

Dismissing the appeal, the Court

HELD: 1. In the present case, the decision of Examination-cum-Section and Appointment Committee for holding the appellant unsuitable was based on the relevant consideration, i.e., a criminal case against the appellant under Section 498A/ 406/34 IPC was pending consideration which was registered on a complaint filed by the wife of the appellant. Such decision of the Committee was well within the jurisdiction and power of the Committee and cannot be said to be unsustainable. The mere fact that subsequently after more than a year when the person whose candidature has been cancelled has been acquitted cannot be a ground to turn the clock backward. [Para 23][452-G-H; 453-A]

2. There being no infirmity in the decision dated 18.07.2018 of the Committee declaring the appellant unsuitable for the post and consequential decision taken by the State to delete the name of the appellant, the High Court did not commit any error in dismissing the writ petition. The fact that subsequently the appellant was acquitted in the criminal case did not furnish sufficient ground for reconsidering the appellant for appointment on the post. [Para 24][453-B-C]

3. The guidelines dated 05.06.2003 has been issued by Government of Madhya Pradesh on the subject “regarding issuing

- A of new guidelines for character verification.” Clause (viii) of paragraph 6 on which the reliance is placed contemplates that the candidate who has been acquitted on merit by the Court will be eligible for the Government service. The aforesaid contemplation relates to at the time of character verification. Thus,
- B at the time of character verification, if a candidate is found to be acquitted on merits by the Court, the candidate shall be treated to be eligible for Government Service. The Clause (viii) cannot come to the rescue of the appellant who at the time of character verification or at the time of consideration of the case of the appellant by the committee on 18.07.2018 had not been acquitted.
- C Had the appellant in column 12 had mentioned about the acquittal or at the time of character verification it was found that the candidate has been acquitted on merit by the Court, Clause 6(viii) would have been attracted but in the present case the said clause is not attracted since at the time of character verification the appellant had not been acquitted and he was acquitted after more than a year from rejection of his candidature. [Paras 26 and 27][453-E-F; 454-B-D]

Commissioner of Police, New Delhi and Another v. Mehar Singh, (2013) 7 SCC 685 : [2013] 13 SCR 432;

- E *Avtar Singh v. Union of India and Others (2016) 8 SCC 471 : [2016] 7 SCR 445; Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Another (2018) 1 SCC 797 : [2018] 1 SCR 112 – relied on.*

- F *Joginder Singh v. Union Territory of Chandigarh and Others (2015) 2 SCC 377 : [2014] 11 SCR 155 – distinguished.*

- G *Mohammed Imran v. State of Maharashtra and Others AIR 2018 SC 4895; Malik Mazhar Sultan (3) and Another v. Uttar Pradesh Public Service Commission and Others (2008) 17 SCC 703 – referred to.*

Case Law Reference

AIR 2018 SC 4895 (2008) 17 SCC 703	referred to referred to	Para 8 Para 12
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[2013] 13 SCR 432	relied on	Para 13	A
[2014] 11 SCR 155	distinguished	Para 15	
[2016] 7 SCR 445	relied on	Para 17	
[2018] 1 SCR 112	relied on	Para 18	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3419 B
of 2020.

From the Judgment and Order dated 06.01.2020 of the High Court of Madhya Pradesh at Jabalpur in WP-27779 of 2019.

R. Venkataramani, Sr. Adv., Danish Zubair Khan, Adv. for the C appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. This appeal has been filed questioning the Division Bench judgment dated 06.01.2020 of the High Court of Madhya Pradesh dismissing the writ petition filed by the appellant. The appellant in the writ petition has prayed for quashing the orders dated 14.09.2018, 18.07.2018 and 21.09.2019 by which appellant has been held not suitable for being appointed to the post of District Judge (Entry Level). D E

3. The brief facts of the case are:

The High Court of Madhya Pradesh issued an advertisement dated 09.03.2017 inviting applications for recruitment in the post of District Judge (Entry Level) in the cadre of Higher Judicial Service by Direct Recruitment from amongst the eligible Advocates. In pursuance to the advertisement, the appellant submitted online application form. The appellant after being declared successful in the Main Examination was called for interview. The provisional select and waiting list was published in which the name of the appellant was included at Serial No.13 in the category of unreserved. The appellant received a communication on 06.04.2018 from the Law and Legislative Department informing that he has been selected for the post of District Judge (Entry Level). He was asked to appear before the Medical Board for the health tests. On 02.07.2018 the appellant was informed that in his attestation form FIR No.852/2014 under Section 498/406/34 IPC is shown and the copy of F G H

- A the same was asked for. On 14.09.2018 order was issued by the Principal Secretary, Madhya Pradesh, Law and Legislative Department declaring the appellant ineligible and directing for deletion the name of the appellant from the select list. The Government also issued a Gazette notification deleting the name of the appellant from the Merit No.13 of the main select list.
- B 4. The appellant filed a Writ Petition No.27434 of 2018 before the High Court challenging the order dated 14.09.2018 and the Gazette notification dated 21.09.2018. On application submitted under the Right to Information Act, the appellant was provided extract of the Minutes of the Joint Meeting of Administrative Committee (Higher Judicial Service) and Examination-cum-Selection and Appointment Committee dated 18.07.2018 by which proceedings the appellant was not considered suitable for being appointed to the post of District Judge (Entry Level). On the basis of a complaint by the wife of the appellant, a criminal case was registered and vide judgment dated 18.09.2019 the appellant was acquitted
- C D of the charge framed against him.
- E 5. The appellant filed an application for amendment of the writ petition to bring on record the order of the acquittal and other events occurred during the pendency of the writ petition. The appellant was permitted to withdraw his earlier writ petition with liberty to file a fresh writ petition. Writ Petition No.27779 of 2019 was filed by the appellant incorporating subsequent events, facts and acquittal order which writ petition has been dismissed by the impugned judgment dated 06.01.2020 by the High Court. Aggrieved by the impugned judgment, the appellant has come up in this appeal.
- F 6. We have heard Shri R. Venkataramani, learned senior counsel for the appellant.
- G 7. Learned senior counsel for the appellant submits that the appellant in his online application form has disclosed about the lodging of FIR No.852/2014 under Section 498A/406/34 IPC. He submits that appellant having disclosed the lodging of FIR against him has not concealed any fact before the High Court and he having been selected on merit was entitled to be appointed. Shri Venkataramani submits that on the subsequent acquittal of the appellant on 18.09.2019 his case for appointment was to be reconsidered by the High Court and the High Court committed an error in not considering the appellant for appointment.
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The candidature of the appellant could not have been cancelled merely on the ground of pendency of criminal case. The appellant could not have been deprived of the employment after acquittal. There was no other material on record to indicate that antecedent or conduct of the appellant was not upto the mark. The High Court ought to have sent the matter back before the Higher Judicial Service and Examination-cum-Selection Committee for reconsideration.

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8. Learned counsel for the appellant has referred to the judgments of this Court which have been relied by the High Court in the impugned judgment. Learned counsel for appellant has also placed reliance on the judgment of this Court in **Mohammed Imran vs. State of Maharashtra and others (C.A.No.10571 of 2018) decided on 12.10.2018**. He submits that the judgment of **Mohammed Imran** was also a case of a judicial officer who was directed by this Court to be given appointment.

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9. We have considered the submissions of the learned counsel for the parties and perused the records.

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10. The present is not a case where the name of the appellant was deleted in the select list on the ground of any concealment of criminal case against him. The appellant has brought on the record the proceedings of Examination-cum-Selection Committee dated 18.07.2018. At Item No.2 of the Agenda the Committee recorded the following decision:

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“ITEM NO.02. Consideration on the matter relates to Character Verification Reports of selected 13 candidates of MPHJS (District Judge-Entry Level) (Direct from Bar) Exam-2016 & 2017, received from Law Department, Bhopal for determination of their eligibility for the said post.

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1. Shri Anil Bhardwaj:-

Attestation Form submitted Shri Anil Bhardwaj and police verification report submitted by Deputy Commissioner of Police, Special Branch, New Delhi, goes to show that FIR 852/2014 under Section 498A/406/34 of IPC has been registered against Shri Anil Bhardwaj on the basis of complaint filed by Smt. Pooja wife of Shri Anil Bhardwaj.

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After due consideration resolved that a case against Shri Anil Bhardwaj under Section 498A, 406-34 IPC is still pending before Rohini Court, New Delhi. Therefore, he is not considered

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- A suitable for being appointed to the post of District Judge (Entry Level)."
10. The FIR against the appellant was lodged by his wife under Section 498A and 406 IPC in the year 2014 on the basis of which a charge-sheet was submitted in the Court on 15.07.2017 under Section 498A and 406 IPC. The appellant has disclosed lodging of the FIR against him in his online application form. The name of the appellant was included in the select list which was forwarded to the State. The State after character verification submitted a report which report was considered on 18.07.2018 by the Administrative Committee (Higher Judicial Service) and Examination-cum-Selection and Appointment Committee and a resolution was taken that due to pendency of the case under Section 498A, 406-34 IPC on the basis of complaint filed by the wife, Smt. Pooja, the appellant is not considered suitable for being appointed to the post of District Judge.
11. Before the High Court, the decision of the Committee dated 18.07.2018 as well as the order of the State dated 14.09.2018 for deleting the name of the appellant was challenged in the writ petition. The main issue to be considered was as to whether resolution dated 18.07.2018 suffered from error which requires judicial review by the High Court in exercise of jurisdiction under Article 226. The submission which has been pressed by the counsel for the appellant is that appellant's case was required to be reconsidered in view of his subsequent acquittal on 18.09.2019.
12. The recruitment to the Judicial Service is governed by the provisions of Madhya Pradesh Uchchatar Nyayik Seva (Bharti Tatha Seva Shartan) Niyam, 1994. This Court issued direction to all States to fill up the vacancies in subordinate Courts in a time schedule. The direction was issued by this Court in **Malik Mazhar Sultan (3) and another vs. Uttar Pradesh Public Service Commission and others, 2008(17) SCC 703**. The selection process for filling up the post of District Judge has to be completed by all the High Courts as per the time schedule fixed by this Court. After declaration of the merit list the candidates have to be given appointments in time bound manner so that they may join the respective posts. There is no dispute that on the date when the Committee declared the appellant unsuitable, criminal case against him under Section 498A and 406 IPC was pending which was registered on a complaint filed by the appellant's wife, Smt. Pooja. The mere inclusion

in the select list does not give an indefeasible right to a candidate. The employer has right to refuse appointment to the candidate included in the select list on any valid ground. The persons who occupy Judicial Service of the State are persons who are expected to have impeccable character and conduct. It is not disputed that the criminal case under Section 498A and 406 IPC was pending at the time when the appellant applied for the recruitment, when he appeared for the interview and when the result was declared. The character verification report was received from the State where pendency of the criminal case was mentioned which was the reason for the Committee to declare the appellant unsuitable. The submission which needs to be considered is that whether in view of the subsequent acquittal of the appellant, his case was required to be reconsidered and he was entitled to be appointed.

13. This Court in **Commissioner of Police, New Delhi and another vs. Mehar Singh, (2013) 7 SCC 685**, while considering a case of antecedents verification for appointment into Delhi Police Service made the following observation in paragraph 35:

“**35.** The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force.....”

14. The observation was made by this Court in the above case that a candidate wishing to join the police force must be a person having impeccable character and integrity. The above observations apply with greater force to the Judicial Service. This Court further observed that even in the case of acquittal, it has to be examined as to whether the person was completely exonerated in the case or not. In the present case the acquittal having taken place after the close of recruitment process, there was no question of examining the acquittal order by the High Court at the time of finalizing the selection process.

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- A 15. Learned counsel for the appellant has referred to the judgment of this Court in **Joginder Singh vs. Union Territory of Chandigarh and others, (2015) 2 SCC 377**, which was a case whether the appellant was acquitted by the trial court for a case under Section 148/149/323/ 325/307 IPC. In the above case acquittal took place even before the appellant was called for the interview/medical examination. This fact was recorded in paragraph 24 of the judgment in the following words:
- “**24.** However, in the present case, we have observed that the appellant was involved in a family feud and the FIR came to be lodged against him on 14-4-1998, after he had applied for the post of Constable. Further, he had been acquitted on 4-10-1999 i.e. much before he was called for the interview/medical examination/written test.....”
- B 16. The above case is clearly distinguishable and does not help the appellant.
- C 17. A three-Judge Bench of this Court in **Avtar Singh vs. Union of India and others, (2016) 8 SCC 471**, had occasion to examine different aspects of verification form after selection including the question of having criminal antecedents and pending of criminal case. This Court laid down that in the event criminal case is pending and incumbent has not been acquitted employer may well be justified in not appointing such an incumbent. In paragraph 32 following has been laid down:
- “**32.** No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.”
- D 18. Even in a case where candidates have been acquitted in criminal case, it was held that the decision of the Screening Committee being not

actuated by mala fide regarding suitability of the candidate is to be respected. This Court in **Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and another, (2018) 1 SCC 797**, laid down following in paragraphs 13 and 17:

“**13.** It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh*, 2013 (7) SCC 685 and *Parvez Khan*, 2015 (2) SCC 591 cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.

17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasised. As held in *Mehar Singh* case⁵, the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside.”

19. Now, we may notice the judgment of **Mohammed Imran (supra)** which has been heavily relied by the learned counsel for the appellant. In the above case the appellant was selected for Judicial Service whose selection was cancelled on 04.06.2010 due to the character verification report of the Police. Writ petition was dismissed by the High Court. It was contended before this court that the appellant was acquitted of the charge under Sections 363, 366, 34 IPC on 28.10.2004 that is much before he cleared the examination for appointment in the year

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- A 2009. The appellant disclosed his prosecution and acquittal by the Sessions Court. This Court noticed the aforesaid fact in paragraph 9 of the judgment in the following words:

“9. It is an undisputed fact that one Shri Sudhir Gulabrao Barde, who had been acquitted on 24.11.2009 in Case No.3022

- B of 2007 under Sections 294, 504, 34 IPC, has been appointed.....”

20. This Court held that report received reveals that except for the criminal case, in which he had already been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour. This Court found decision rejecting

- C the candidature of the appellant as untenable by making following observation in paragraph 11:

“11. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the consideration of the candidature of the appellant and its rejection are afflicted by a

- D myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand.”

21. There can be no dispute that in event it is found that decision by which the candidature of a candidate is rejected is arbitrary or actuated

- E by malafide such decision can be interfered by the Constitutional Courts. We have already noticed the judgment of this Court in **Union Territory, Chandigarh Administration and others vs. Pradeep Kumar and another (supra)** that the decision of the Screening Committee must be final unless it is mala fide.

- F 22. There can be no dispute to the above proposition. But there can be other valid reasons for not sustaining the decision of Screening Committee/ Selection Committee apart from the ground of mala fide. Any arbitrary decision taken by the Selection Committee can very well be interfered by the Constitutional Courts in exercise of Judicial Review Jurisdiction.

- G 23. Reverting to the facts of the present case, the decision of Examination-cum-Section and Appointment Committee for holding the appellant unsuitable was based on the relevant consideration, i.e., a criminal case against the appellant under Section 498A/406/34 IPC was pending consideration which was registered on a complaint filed by the H wife of the appellant. Such decision of the Committee was well within

the jurisdiction and power of the Committee and cannot be said to be unsustainable. The mere fact that subsequently after more than a year when the person whose candidature has been cancelled has been acquitted cannot be a ground to turn the clock backward.

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24. There being no infirmity in the decision dated 18.07.2018 of the Committee declaring the appellant unsuitable for the post and consequential decision taken by the State to delete the name of the appellant, the High Court did not commit any error in dismissing the writ petition. The fact that subsequently the appellant was acquitted in the criminal case did not furnish sufficient ground for reconsidering the appellant for appointment on the post.

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25. One more submission advanced by learned counsel for the petitioner needs also to be considered. The petitioner's contention is that the decision declaring the petitioner unsuitable on the ground of pendency of criminal case under Section 498A, 406 IPC was contrary to the guidelines issued by the Government of Madhya Pradesh for character verification dated 05.06.2003. He submits that as per paragraph 6(viii) of the guidelines on the acquittal on merit of the case by the Court, the candidate will be eligible for Government service. He submits that the above clause of the Government Order has been breached in declaring the appellant unsuitable.

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26. The guidelines dated 05.06.2003 has been issued by Government of Madhya Pradesh on the subject "regarding issuing of new guidelines for character verification." Paragraph 6 which has been relied by the counsel for the appellant is regarding column 12 of the Attestation form. It is useful to extract paragraph 6 and clause (viii) which are as follows:-

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"6. The Column 12 of the attestation form filled for character verification by selected candidates for government service, criminal background, judicial case and the information about acquittal or conviction in it, willfully or erroneously or ignorantly kept vacant subject to qualification for appointment in government service taking into consideration the policy as per rules by the state government with immediate effect decisions have been taken.

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(i).....

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- A (viii) On the acquittal on merit of the case by the Hon'ble Court, the candidate will be eligible for government service."

27. Clause (viii) on which the reliance is placed contemplates that the candidate who has been acquitted on merit by the Court will be eligible for the Government service. The aforesaid contemplation relates
- B to at the time of character verification. Thus, at the time of character verification, if a candidate is found to be acquitted on merits by the Court, the candidate shall be treated to be eligible for Government Service. The above clause (viii) as quoted above cannot come to the rescue of the appellant who at the time of character verification or at
 - C the time of consideration of the case of the appellant by the committee on 18.07.2018 had not been acquitted. Had the appellant in column 12 had mentioned about the acquittal or at the time of character verification it was found that the candidate has been acquitted on merit by the Court, Clause 6(viii) would have been attracted but in the present case the said clause is not attracted since at the time of character verification the
 - D appellant had not been acquitted and he was acquitted after more than a year from rejection of his candidature.

28. Learned counsel for the appellant lastly has contended that due to deletion of the name of appellant from select list a stigma is attached to him, for removal of which this Court may issue notice in this
- E SLP. As noted above, the appellant having already been acquitted by the judgment dated 18.09.2019 stigma of criminal case has already washed out and the criminal case having resulted in acquittal no stigma is attached to the appellant's name on the above ground. The apprehension of the learned counsel for the appellant that a stigma shall continue with the name of the appellant is misconceived, stigma, if any, is already over by acquittal.

29. We, thus, are of the view that the High Court did not commit any error in dismissing the writ petition. The appellant was not entitled for any relief in the writ petition. In the result, while dismissing this appeal we observe that stigma, if any, of the criminal case lodged against
- G appellant under Section 498A/406/34 IPC is washed out due to the acquittal of the appellant vide judgment dated 18.09.2019.