

Madras High Court

Thiru.C.V.Jayaraman vs Unknown on 7 January, 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2009

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.Nos.8599 and 8600 of 2007

M.P.No.1 of 2008

1.Thiru.C.V.Jayaraman

... Petitioner in WP.No.8599/07

2.Thiru.K.Sahadevan

... Petitioner in WP.No.8600/07

v.

The Deputy Inspector
General of Police,
Chengleput Range,
Chennai-16.

... Respondent in both W.Ps.

These Writ Petitions came to be numbered by transfer of O.A.Nos.1182 and 1183 of

For Petitioner

: Mr.K.Venkataramani, SC
for Mr.Muthappan

For Respondents

: Mr.V.R.Thangavelu,
Addl. Government Pleader

O R D E R

The petitioners have challenged the order, dated 05.01.2002 of the Deputy Inspector of Police, Chengalpattu Range, dismissing them from service. Referring to Police Standing Order 59, Mr.K.Venkataramani, learned Senior Counsel for the petitioners submitted that though the petitioners have been convicted and sentenced to undergo imprisonment for offences under Section 302 r/w. Section 34 I.P.C., in a Sessions case, which was ultimately confirmed by the Supreme Court in its judgment, dated 01.11.2002, the conviction for offence of murder does not involve moral turpitude and therefore, the penalty of dismissal should be modified into that of compulsory retirement. Taking into account, the extenuating circumstances, non-availability of the direct evidence and length of service put in by the petitioners, the respondent ought to have inflicted only compulsory retirement instead of resorting to capital punishment of dismissal.

Heard the learned Additional Government Pleader also.

2. A perusal of the impugned order reveals that the petitioners were involved in Crime Branch CID.Cr.NO.6 of 1989, under Section 302, r/w. 34 I.P.C., in S.C.No.17 of 1992 for causing the death of one Vadivel by beating him with a stick on 05.03.1986 in Wallajabad, Makaral Police Station. The learned Sessions Judge, Chengalpattu on analysis of evidence, convicted and sentenced the petitioners to life imprisonment. The conviction and sentence were confirmed by the Apex Court, by its judgment, dated 01.11.2002 in C.A.No.467 of 1992.

3. Police Standing Order 59 referred to by the learned Senior Counsel is extracted hereunder:

"A Police Officer convicted of an offence involving moral turpitude and sentenced to undergo imprisonment shall ordinarily be dismissed or removed from service, unless he is retired from service with special orders by Inspector General of Police. In case where the police officer is convicted and sentenced to undergo imprisonment for an offence not involving moral turpitude he may be compulsorily retired from service by the competent authority."

4. To examine the contention of the learned senior counsel for the petitioner that murder does not involve moral turpitude, warranting extreme penalty of dismissal from service, it is necessary to consider the meaning of the word "moral turpitude" as explained in the dictionaries and few decisions of the Courts dealing with the offences, involving moral turpitude.

5. In Chambers 20th Dictionary, the word "moral" is defined as, "relating to character or conduct considered as good or evil; ethical; adhering to or directed towards what is right; virtuous, especially in matters of sex, capable of knowing right and wrong; subject to moral law; having an effect on the mind or will; supported by evidence of reason or probability. The word "Turpitude" defines, "baseness, depravity; vileness.

6. As per Webster's Dictionary, the word "moral" means, "(1) of, pertaining to, or concerned with the principles or rules of right conduct or the distinction between right and wrong; ethical: moral attitudes. (2) expressing or conveying truths or counsel as to right conduct, (3) founded on the fundamental principles of right conduct rather than on legalities actment, or custom: moral obligations. (4) conforming to the rules of right conduct; (5) of, pertaining to, or acting on the mind, will, or character, (6) resting upon convincing grounds of probability; virtual; a moral certainty, (7) the embodiment or type of something and (8) principles or habits with respect to right or wrong conduct. The word "turpitude" means, "(1) vile, shameful, or base character; depravity and (2) a vile or depraved act.

7. In Black's Law Dictionary, "Moral Turpitude" is explained as follows:

"The act of baseness vileness, or the depravity in private and social duties which man owes to his fellowmen or to society in general, contrary to accepted and customary rule of right and duty between man and man"

The word "Turpitude" is explained in the same dictionary as extracted:

"In its ordinary sense, inherent baseness or vileness of principle or action, shameful, wickedness, depravity. In its legal sense, everything done contrary to justice, honesty, modesty or good morals. An action showing gross depravity."

8. "Moral" is explained in the Random House Dictionary of the English Language, College Edition, thus:

"of pertaining to or concerned with right conduct or its principles. Being in accordance with such principles conforming to these principles rather than to law, custom etc.,"

"Turpitude is stated to mean baseness or depravity. A base or depraved out."

9. In words and phrases, Permanent Edition, Vol.27, "Moral Turpitude" is stated as follows:

"Moral Turpitude is defined as an out of baseness, vileness or depravity in private and social duties owing to fellowmen of society in general, contrary to accepted and customary rules. Moral turpitude is an act of baseness, vileness or depravity in the private social duties which a man owes to his fellowmen or to society in general contrary to the accepted and customary rule of right and duty between man and man. The words involving moral turpitude as used in the law with reference to crimes, refer to conduct which is inherently base, vile or depraved; contrary to accepted rules of morality. Whether it is or is not punishable as a crime, they do not refer to conduct which before it was made punishable as a Crime, was not generally regarded as wrong or corrupt. 'Turpitude' is defined as inherent baseness or vileness of principle, words or actions or shameful, wickedness or depravity, whereas 'moral' describes conduct that conforms to the generally accepted rules which society recognised should govern everyone in his serial and commercial relations with others, regardless of whether those rules constitute legal obligations, so that moral turpitude implies something in itself whether punishable by law or not, the word 'moral' serving only to emphasize the nature of the wrong committed."

10. In Ramanatha Aiyar's Law Lexicon, "moral turpitude" means, "Moral Turpitude Anything done contrary to Justice, honesty, principle or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowman as to society in general contrary to the accepted and customary rule of right and duty between man and man."

11. Dealing with the term, "moral turpitude" the Punjab High Court in Durga Singh v. State of Punjab reported in AIR 1957 Punj 97, held as follows:

"The term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellowman or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not."

The above reported case relates to a member of a disciplined force, who has been convicted under Section 34 of the Police Act, 1961, for having been found drunken at a public place or to have become habituated to liquor.

12. In *Baleshwar Singh v. District Magistrate and Collector, Banaras*, reported in AIR 1959 All. 71, an offence under Section 182 I.P.C., (False Information, with intent to cause public servant to use his lawful power to the injury of another person) was held to involve moral turpitude, which expressed as follows:

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore, the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still sets contrary to it and does it knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

13. In *Shiv Anand v. Sub-Divisional Officer, Chunar* reported in 1961 RD 186 (All) the test propounded by the Court for the offences involving moral turpitude is as follows:

"Ideas of morals often undergo changes in different periods of a country's history. It is also true that different peoples of the world sometimes differ as to whether a particular act is moral or immoral. Whenever a question has to be considered as to whether a certain act is moral or immoral, one has to consider as to how that act is viewed by the society or the community, as the case may be, and if the society or the community views such act as involving moral turpitude, then even though some particular individual may not consider it so will not make the act a moral one or a praiseworthy act. Therefore, whether an act involves moral turpitude or does not, has to be determined not necessarily on abstract notions of the rights and wrongs involved or the harm or good coming out of the act but how that act is looked upon (by) the society where the act has been committed ..."

14. The Allahabad High Court considered the case as to whether the conviction for offence under Section 60 of the U.P. Excise Act, involving moral turpitude in *Mangali v. Chhakki Lal* reported in AIR 1963 All. 527. The offence was possession of one kg of bhang in a prohibited District of Kanpur. The Court observed as follows:

"From consideration of the dictionary meaning of the words 'moral' and 'turpitude' as well as the real ratio decidendi of the cases the Principle which emerges appear to be that the question whether a certain offence involves moral turpitude or not all necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving 'moral turpitude', would not have been used by the Legislature and it would have disqualified every person who had been convicted of any offence. The tests which should ordinarily be applied for judging whether a certain offence does or does not, involve moral turpitude appear to

be (1) whether the act leading to a conviction was such as could shock the moral conscience or society in general (2) whether the motive which led to the act was a base one, and (3) whether on account of the act having been committed the perpetrator could be considered to be a depraved character or person who was to be looked down upon by the society."

15. In *Harsukh Lal v. Sarnam Singh* reported in 1964 All.L.J. 1118, a learned Single Judge held that the offence of murder does not involve moral turpitude. The observations of Hon'ble Justice V.Broome, J. are as follows:

"'Turpitude' is a word of high emotional significance, suggesting conduct of such depravity as to excite feelings of disgust and contempt. The crime of simple hurt does not normally provoke any such reaction and consequently cannot be classed as an offence involving moral turpitude and it seems to me that there is no logical reason why the offence of murder, which in essence is only an aggravated form of hurt, should be held necessarily to involve moral turpitude. I am willing to concede that murders which are premeditated and planned in cold blood, those which the perpetrator committed for some base motive and those which are carried out with extreme ferocity and cruelty do involve moral turpitude, as they naturally evoke a spontaneous feeling of repulsion and condemnation in the mind. But a murder committed in the heat of a fight or in response to serious provocation could hardly be placed in the same category."

16. In *Buddha Pitai v. Sub-Divisional Officer, Malihabad*, reported in AIR 1965 All 382, a Full Bench of Allahabad High Court considered as to whether the conviction for selling food stuffs containing a colouring matter other than prescribed and an offence under Sections 7/16 of the Preventive of Food Adulteration Act, involving moral turpitude. While dealing with the specific expression "offences involving moral turpitude in Clause(h) of Section 5-A of Panchayat Act, the Full Bench observed that, "The expression "offence involving moral turpitude" in clause (h) of Section 5-A of the Panchayat Act merely means that the offence should be such as to have the effect of embarrassing a man socially by lowering him in public estimation. If an offence is such that the community regards a person convicted of such an offence as one who has committed a breach of social duties or obligations which a man owes to his fellowmen or one who has acted dishonestly or against the established moral standards of honesty and integrity or accepted rules of good conduct, then conviction for such an offence would involve moral turpitude. The important question, therefore, is not what the ingredients of the offence are but how the community at large views the offence. Adulteration of food is not only a crime against an individual but also a crime against humanity at large. The term moral as appended to turpitude is not used in a narrow sense. It is broad enough to include any act which constitutes a breach of the social obligations which one man owes to another. Thus, any act involving a breach of any rule of good conduct or dereliction from principles of honesty, integrity and fairness in business-matter would involve "moral turpitude."

17. In *Risal Singh v. Chandgi Ram* reported in AIR 1966 Punj 393, the member of a police force was found guilty of contravention of law and the offence committed by him involved moral depravity and illness of character. The three tests propounded by the Court to be ordinarily applied for judging whether a certain offence did or did not involve moral turpitude are as follows:

1. Whether the act leading to a conviction was such as could shock the moral conscience of society in general?

2. Whether the motive which led to the act was a base one? and

3. Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society?

18. The Division Bench of the Bombay High Court in *Bhanubhai M. Raval v. Union of India* reported in AIR 1991 BOMBAY 91, considered a case, where a member of Pradesh Council, appointed as a councilor, was disqualified on account of conviction by the Sessions Court for various offences, including the offence of murder. A voter in the constituency sought for a direction to discontinue the member's councilorship and also his membership in the council, which was equivalent to that of a Minister of a State in the legislative assembly. The Division Bench while considering the effect of conviction of the councilor for the offences including murder and the plea of the councilor that there is every likelihood of acquittal in appeal, observed that, "But the legislation relating to disqualification of members of elected bodies such as Parliament and Legislatures cannot be imputed with the intention of allowing the legislators of suspect character to be at the helm of the affairs of the State. Law givers are, like the law expounders and the law interpreters, Caesar's wife - must be above all suspicions."

19. However, a Division Bench of Punjab High Court in *Kuldeep Singh v. State of Punjab* reported in AIR 1994 P & H 242, held that, "Act of killing a person is normally attributed to a feeling of hurt or revenge; an act of personal vendetta. Per se an act of murder will not come within the broad concept of 'moral turpitude' as interpreted by Courts."

20. In *Himat Ali Khan* reported in 1997 (3) SCC 131, an advocate for assaulting his opponent with knif was convicted under Section 307 I.P.C., and to undergo rigorous imprisonment for a period of three years and a further period of nine months for an offence under Section 25 of the Arms Act. The conviction and sentence for the offence under Section 307 I.P.C. were maintained by the High Court. But the advocate was given benefit of doubt regarding the offence under Section 25 of the Arms Act and the conviction and sentence of the said offence were set aside. Before he could be arrested to undergo rigorous imprisonment for three years for the offence under Section 307 I.P.C., the sentence was suspended, on the basis of the letter purported to be issued by the Governor under Article 161 of the Constitution of India. Later on, it was found that the above said letter itself was fraudulent and there upon a warrant of arrest was issued by the Court. Learned Additional District and Sessions Judge, who was responsible for executing the sentence, sent a complaint about this to the Bar Council of U.P., for taking action against the advocate under Section 35 of the Advocates Act, 1961. The Disciplinary Committee of Bar Council of U.P., debarred the advocate for two years. On appeal, the Bar council of India, set aside the order on the view that there was no material to hold that the Advocate had prepared the letter, which was subsequently, found to be forged. In the meanwhile, the appellant, who was the victim in the offence under Section 307 I.P.C., made a complaint against the advocate to the Secretary, Bar Council of U.P., stating that he was convicted and sentenced under Section 307 I.P.C. The Disciplinary Committee of Bar Council of U.P.,

debarred the advocate from practicing for a period of three years. Aggrieved by the same, the advocate preferred an appeal to the Bar Council of India to set aside the penalty. The victim also filed another appeal to the Bar Council of India and prayed that the punishment imposed by the Disciplinary Committee of the Bar Council of U.P., be enhanced and his name to be removed from the roll of advocates. The Bar Council of India set aside the order of suspension. Consequently, the appeal filed by the victim was dismissed. Being aggrieved by the order of the disciplinary committee, Bar Council of India, allowing the appeal filed by the advocate and the dismissal of the appeal filed for enhancement, the victim filed an appeal to the Supreme Court. Dealing with the act of misconduct, the Supreme Court observed that, "Under sub-section (3) of Section 35 of the Act the Disciplinary Committee of the State Bar Council is empowered to pass an order imposing punishment on an advocate found guilty of professional or other misconduct. Such punishment can be reprimand [clause (b)], suspension from practice for a certain period [clause (c)] and removal of the name of the advocate from the State roll of advocates [clause (d)], depending on the gravity of the misconduct found established. The punishment of removal of the name from the roll of advocates is called for where the misconduct is such as to show that the advocate is unworthy of remaining in the profession. In this context, it may be pointed out that under Section 24-A of the Act a person who is convicted of an offence involving moral turpitude is disqualified for being admitted as an advocate on the State roll of advocates. This means that the conduct involving conviction of an offence involving moral turpitude which would disqualify a person from being enrolled as an advocate has to be considered a serious misconduct when found to have been committed by a person who is enrolled as an advocate and it would call for the imposition of the punishment of removal of the name of the advocate from the roll of advocates. In the instant case Respondent 1 has been convicted of the offence of attempting to commit murder punishable under Section 307 IPC. He had assaulted his opponent in the courtroom with a knife. The gravity of the misconduct committed by him is such as to show that he is unworthy of remaining in the profession."

21. A learned Single Judge of the Allahabad High Court in *Mahak Singh v. State of U.P., and others*, reported in AIR 1999 All. 274, considered a case of disqualification of a member of pradhan of Gramma Panchayat, who was an accused involve in a pre-meditated and deliberate murder of his step mother. While dealing with the contention as to whether, such offence involves moral turpitude and sufficient to earn disqualification within the meaning of Section 5-A(g)(C) of U.P. Panchayat Raj Act (26 of 1947) and S.95(1)(g), S.5A(g), Proviso of U.P. Panchayat Raj (Computation of Period of five years for Removal of Disqualification, Fixation of period of dues etc., and Settlement of Disputes of Disqualification) Rules (1994), the learned Single Judge observed that, "The crime was shocking one and the depravity of the petitioner in the worst form was exhibited. The expression 'moral turpitude', as said above, is not a term of rigid connotation to be defined in any strait-jacket formulae, but regard being had to socio-ethical ethics, and mores of people, at a given time and their cultural heritage, it would not be difficult for the Courts to conclude that the offence committed by the petitioner in exterminating his own step mother in an horrendous manner involves moral wickedness. The petitioner cannot escape from the finding that the offence of murder of Smt. Raj Kumari committed by him and for which he was ultimately convicted was an act of moral turpitude. His conviction u/Ss. 302/34, IPC involving moral turpitude was sufficient enough to earn disqualification within the meaning of provision of Section 5-A(g) of the Act."

22. It is well known that mere conviction of an offence does not in all cases involve moral turpitude. There is no hard and fast rule as to what constitutes moral turpitude. The reason being that the term does not refer the legal standards, but has reference to moral character and state of mind. In so far as murder is concerned, standards of moral across the world do not differ at different places. Murder is a crime which is universally considered to be heinous and measured by the general standards of any civilized society. The murderer is always looked down upon by the society. If murder is not harmful to society or his conduct leading to the conviction is not against the rules of rights and duties between man and man, involving moral turpitude, then tomorrow a murderer can hold any public office, member of any local body, legislature or even parliament.

23. Murder is a heinous crime against the society and the State, the offender is likely to be sentenced to even death penalty in rarest of rare cases and it shocks the moral conscience of the society. The gravity of the offence coupled with the quantum of punishment itself, is an indication as to how both the society as well as the legal system, disapproves the crime and a person convicted of such serious offence is generally ostracized. In other words, murder attaches a depravity of character and the person convicted of murder is shunned from the society.

24. Before a person is appointed to service, his character and antecedents are verified by the employer so as to satisfy himself about the conduct of the person seeking employment. If a person is convicted of an offence, involving moral turpitude, he is disqualified for appointment, as the character or conduct, is found not suitable for holding the office, which enjoins public duty. A murderer, who takes away the life of another human being, thus violating the constitutional guarantee under Article 21 of the Constitution of India, cannot be said to be ethical or a person with good conduct. Murder is opposed to moral law.

25. Going through the judgments stated supra, conduct or offences leading to "Moral Turpitude" can be broadly categorised as follows:

(1) Conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellowman or society in general.

(2) Conduct that implies depravity and wickedness of character or disposition of the person charges with the particular conduct.

(3) False statements disclosing vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. Securing false Community Certificates is held to be a moral turpitude involving disqualification by the Supreme Court in *Madhuri Patil v. Addl. Commissioner Tribal Development* reported in 1997 (5) SCC 437.

(4) Conduct to be determined on abstract notion of rights and wrongs, not on the basis of harm or good coming out of the act, but how that act is looked down by society where the act has been committed.

(5) The act having been committed, the perpetrator could be considered to be a depraved character and looked down upon by the society.

(6) Conduct leading to a conviction was such as it could shock the moral conscience or society in general.

(7) Conduct or offence which disqualifies a person from holding a public office or civil post, which enjoins public duty, retention of such person brings disrepute and scandalous to the office or post.

(8) Any act involving a breach of any rule of good conduct or dereliction from principles of honesty, integrity and fairness in business-matter would involve in moral turpitude.

26. In general terms, a crime of moral turpitude is referred as a crime that encompasses a base or vile act. Offences involving moral turpitude can be broadly classified as follows and they are only illustrative:

(1) crime against persons such as murder, attempt to murder, child abuse, domestic violence, repeated harassment or bodily injury, sexual offences like rape, adultery, prostitution, sodomy, gross indecency, child pornography, etc. (2) Crime against the Government like, counterfeiting, wilfully attempting to evade tax, harbouring offender, conspiring to commit offences against the Government, possession of arms, gambling, etc. (3) Crime involving fraud, making false statement to obtain driving licence, firearms, money laundering, conspiracy to affect public market.

(4) A crime or misdemeanor involving moral turpitude will be determined solely upon the element of the crime or misdemeanor which includes the aspects of baseness, vileness or depravity.

27. As pointed out in *Bhanubhai M. Raval v. Union of India* reported in AIR 1991 BOMBAY 91, law givers are, like the law expounders and the law interpreters should be like Caesar's wife. The Police is a law enforcing agency. They should bear true, faith and allegiance to the Constitution of India and uphold the rights of the citizens as guaranteed by it. It is not out of place to mention that their primary duty is to prevent crime and disorder. Members of the disciplined force are enjoined with public, moral and legal duties to maintain social order and moral law. In that context also, the conviction for offence under Section 302 IPC., would certainly lead to moral turpitude, warranting serious punishment of dismissal.

28. The mere fact that an aspirant to a Civil post is disqualified on account of conviction for offence involving moral turpitude itself would show that a murderer can no longer expect that he should be retained in public office. The petitioners, being Police Officers, who have to maintain the Constitution of India and the laws, to prevent crime and disorder, have committed murder by beating one Vadival with stick on 05.03.1986 in Wallajabad, Makaral Police Station, for which, they have been tried and convicted and sentenced under Section 302 read with 34 IPC, which were sustained by the Apex Court. The contention that there is no direct evidence and the S. MANIKUMAR, J.

skm petitioners are entitled to modification of the penalty as per PSO 59 is untenable. There is absolutely no merit in the Writ Petitions. In these circumstances, the contentions of the learned senior counsel that murder is not an offence involving moral turpitude, is rejected.

29. In the result, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

07.01.2009 Index: Yes skm To The Deputy Inspector General of Police, Chengleput Range, Chennai-16.

W.P.No.8599 and 8600 of 2007